



# WOMEN'S RIGHTS SOME PROGRESS, MANY GAPS

Shadow report by Dutch NGOs; an examination of the Fifth Report by the Government of the Netherlands on the Implementation of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 2005-2008.

Netwerk VN-Vrouwenverdrag (Dutch CEDAW Network), November 2009





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Netwerk VN-Vrouwenverdrag (Dutch CEDAW Network),  
November, 2009

## **This report is submitted on behalf of the following NGOs:**

- Art.1 (the national association against discrimination)
- Aim for human rights
- Aletta- instituut voor vrouwengeschiedenis (Aletta, Institute for women's history)
- Bezorgdemoeders.nl (Troubledmothers.nl)
- BLinN (Bonded Labour in the Netherlands)
- COC Nederland (Federation of Dutch associations for the integration of homosexuality COC Netherlands)
- CoMensha (La Strada Netherlands)
- Cordaid
- E-Quality (Knowledge centre for gender, family and diversity issues)
- FemNet (FemNet, Green Party, the Netherlands)
- FNV (Netherlands Trade Union Confederation FNV, 16 affiliated Trade Unions)
- FNV vrouwenbond (FNV Womens Union)
- Foundation Positive Women of the World the Netherlands
- HIVOS (Humanist Institute for Cooperation with Developing Countries)
- ICCO (Interchurch organisation for development co-operation)
- IFHHRO (International Federation of Health and Human Rights Organisations)
- IFOR Women Peacemakers Program
- Johannes Wier Foundation
- Justitia et Pax
- Mama Cash
- MOVISIE (Netherlands centre for social development)
- Nederlandse Vereniging voor Vrouwenbelangen, Vrouwenarbeid en Gelijk Staatsburgerschap (Netherlands Association of Women's Interests, Women's Work and Equal Citizenship)
- NJCM (Dutch Section of the International Commission of Jurists)
- NOOM (Network of Organisations of Elderly Migrants)
- NVR (Netherlands Council of Women)
- Oudere Vrouwen Netwerk Nederland (Elderly Women's Network NL)
- OXFAM NOVIB
- Passage, christelijk-maatschappelijke vrouwenbeweging ( Passage, Christian Community Women's movement)
- Pharos (Knowledge centre on Refugees, Migrants and Health)
- Proefprocessenfonds Clara Wichmann (Women's Rights Fund Clara Wichmann)
- Rode Draad (The Red Thread)
- Rutgers Nisso Groep (Expert Centre on Sexuality)
- Soa Aids Nederland (STD Aids the Netherlands)

- Stichting Emancipatie Online
- Stichting Femfusion
- Stichting OndersteBoven (DownsideUp Foundation)
- TAMPEP International Foundation
- Technika 10 Nederland
- Tiye International (Platform of 21 National Associations of Black, Migrant and Refugee Women and Youth)
- TNN (Transgender Network Netherlands)
- Unie KBO (The Dutch Seniors Organization)
- VAM (Women and Labor Market Foundation)
- Vereniging voor Vrouw en Recht Clara Wichmann (Association Women and Law Clara Wichmann)
- VHTO (National expert organisation girls/women and science/technology)
- Vluchtelingenorganisaties Nederland (Refugee Organisations Netherlands)
- VluchtelingenWerk Nederland (Dutch Council for Refugees)
- VNVA (Dutch Society of Medical Women)
- Vrouwen Tegen Uitzetting (Women Against Deportation)
- VVAO (Netherlands Association of Higher Educated Women/International Federation of University Women)
- Werkgroep 1325 (Dutch Working Group 1325)
- WGNRR (Women's Global Network for Reproductive Rights)
- Wij Vrouwen Eisen (Dutch Abortion Committee We Women Demand)
- WILPF Dutch Section (Women's International League for Peace and Freedom)
- WO=MEN, Dutch Gender Platform

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## Introduction

This shadow report on “the 5<sup>th</sup> Report from the Netherlands about the Implementation of the UN-Women’s Convention, period 2005-2008” has been compiled by the Dutch CEDAW Network. The independent network consists of a core group of ten Dutch NGOs and several individual CEDAW specialists. Dozens of other NGOs are connected, forming an outer circle. Since the network itself is not a legal entity, one of the participating NGOs, namely *Aim for human rights*<sup>1</sup>, which holds consultative status at ECOSOC, serves in that capacity. The preparation, writing and presentation to the CEDAW-Committee was funded by the Ministry of Education, Culture and Science, which currently coordinates implementation of the Convention.

### The process of shadow reporting

The process of shadow reporting was slightly different from previous occasions. In 2007, the Dutch CEDAW Network started to monitor the implementation of the Concluding Comments of the fourth periodic report of the Netherlands (CEDAW/C/NLD/CO/4). Together with other NGOs working on some of the issues the network selected a few of the *Principal areas of concern and recommendations* as focal points: maternity benefit for entrepreneurs, violence against women, prostitution and trafficking of women, and family reunion. It presented developments with respect to these issues in the Monitor in mid-2008.<sup>2</sup>

The government handed in its 5<sup>th</sup> report in the summer of 2008 and the network began open consultation with NGOs to identify main issues to address in the shadow report and draft a profile for the rapporteurs/spokespersons. At the end of November 2008 the network was informed about the schedule for the 45<sup>th</sup> session and the change of the Committee’s procedure: the Pre-session of 9 February 2009. The time was too short to prepare a full-fledged shadow report, so the Dutch CEDAW Network decided to select a few issues arising from the consultation and the Monitor. These included concerns surrounding domestic workers, informal care and the Status of CEDAW (applicability within the legal order), which are to be found in the NGOs Notes.<sup>3</sup> Two representatives of the Dutch CEDAW Network presented the NGOs’ views at the Pre-session and reported via a weblog to the wider NGOs audience in the Netherlands.<sup>4</sup>

After an open procedure two coordinators/ rapporteurs were selected and several expert-meetings on a wide range of subjects were held. Preliminary drafts were worked through by the CEDAW Network, as well as by experts who contributed. Thus over a hundred people have been involved in the process directly, and many more indirectly. The hosting of the expert-meetings, together with the time and energy of the NGOs experts (staff as well as volunteers), amounts to financial contributions on the part of the NGOs. The rapporteurs also looked at (shadow) reports under other UN-Conventions and presentations by the Dutch government to other human rights bodies. A final draft was widely distributed among NGOs for approval. The presentation of the final report took place on 24 November 2009 at a public NGO meeting.

In the midst of this process, a meeting on the List of Issues and Questions was convened between NGOs and representatives of the Ministries engaged in the processing of the answers, initiated by the Dutch CEDAW Network.<sup>5</sup>

### Structure of this shadow report

In Part 1, the NGOs present general remarks. Part 2 examines the individual articles of the Convention.

Part 1 opens with comments about the manner of reporting adopted by the Dutch government. Section 2 discusses the general state of affairs with respect to the role of the

1 Formerly known as Humanist Committee on Human Rights

2 [http://vrouwenverdrag.nl\\_documenten/vvnl/nieuws/2008/monitoreindversie-def3.pdf](http://vrouwenverdrag.nl_documenten/vvnl/nieuws/2008/monitoreindversie-def3.pdf) (last visit 21-09-2009)

3 <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/DCNNetherlands45.pdf> (last visit 21-09-2009)

4 <http://www.cedawschaduwrapport.blogspot.com>

5 CEDAW 2009, Government of the Netherlands 2009

government in implementing the Convention and promoting gender equality and gender mainstreaming, and includes most of the questions and answers presented under the headings 'general' and 'legislative, policy and institutional framework'. In the third section, the NGOs highlight some of the seeming discrepancies in the Dutch government's approach. The fourth section discusses the Status of CEDAW and its applicability in the domestic legal order.

The chapters about the various individual articles in Part 2 follow the government's line of reporting. Since the government sometimes addresses the same issue under different articles (for instance women in decision making positions), this shadow report does the same. Within each chapter, the main issues are identified in paragraphs sometimes consisting of sub-paragraphs focusing on related subjects. Each (sub-) paragraph concludes with a suggestion in italics to the CEDAW-Committee – hereafter referred to as the Committee. All these suggestions and recommendations have been compiled in the List of Recommendations. The titles of the (sub-) paragraphs summarise the issue at stake so the table of contents can be regarded as an executive summary of the shadow report.

The format of the 5<sup>th</sup> government report that has been sent to parliament contains a different page numbering compared to the report that can be found at the UN website.<sup>6</sup> Therefore this shadow report uses a double reference when referring to the government's report: p. x / y in CEDAW/C/NLD/5.

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<sup>6</sup> *Parliamentary Papers II 2007/08 30420 nr. 122 Bijlage (attachment)* – to be found via <http://parlando.sdu.nl/cgi/login/anonymous>, resp <http://www2.ohchr.org/english/bodies>

## Part 1 - General remarks

### 1. Dutch government Reporting

#### **Some progress, but insufficiently result-oriented**

The 5<sup>th</sup> Government Report is certainly more comprehensive than the previous one. NGOs regret, though that it is still not analytical or as result-oriented as required in CEDAW guidelines E.3. It is too much of a summary of “measures and intentions” (to quote the government p. 46/ p. 87 in CEDAW/C/NLD/5). Instead, clear objectives should have been established, and progress monitored regarding achievement of these with additional measures instituted when efforts by national or local authorities and other organisations fall short.

The NGOs appreciate government's effort to provide the Committee with more information by attaching several appendices. It is, however, not clear why the individual appendices were attached. Why, for instance, was the 5<sup>th</sup> report of the Dutch National Rapporteur on Trafficking in Human Beings attached, without an opinion by the government with respect to the recommendations of the Rapporteur?<sup>7</sup> Why was the overall report of the Emancipation Review Commission (VCE) ‘*A bit better is not good enough*’ not attached as an appendix? The summary of the VCE conclusions the government presents is, in the view of the NGOs, not even a shadow of the real outcome.

*NGOs believe the Committee would have appreciated the overall report of the Emancipation Review Commission (VCE) as an appendix because of the large overlap in concerns between the Commission and the CEDAW Committee. The NGOs suggest that the Committee asks the government why it limits itself to providing information on measures and intentions rather than results, and why it did not provide a translation of the overall VCE report .*

#### **Change of conceptual approach to the implementation of the Convention?**

It is also unfortunate that the 5<sup>th</sup> report does not follow the conceptual approach of the 2<sup>nd</sup>, and 3<sup>rd</sup> ones. This identified three levels of policy:

- *achievement of complete equality for women before the law;*
- *improvement of the de facto position of women;*
- *efforts to confront the dominant gender-based ideology.*

This approach was based on recommendations of the independent expert committee, which in 1997 formulated the first National Report on implementation of the Convention. The committee analysed three sub-objectives in the Convention and recommended use of this conceptual approach to the implementation of each article of the Convention.<sup>8</sup> It is not clear why this approach has been abandoned since the government never lodged a formal change of opinion regarding the issue. The committee commended the government on its conceptual approach in 2001.<sup>9</sup> In 2004, in General Recommendation No.25 on article 4, paragraph 1, the committee summarised the State Parties' obligations, identifying the same three levels in para 7.

*The NGOs suggest that the Committee asks the government for clarification: did it change its conceptual approach on the implementation of the Convention and if so, why?*

#### **Absolutely no reference to General Recommendations**

It is worrying that no references whatsoever are made to the General Recommendations of the Committee, neither in the report nor elsewhere, for instance in policies. The NGOs have included the General Recommendations in their assessment of the implementation of the Convention in this shadow report. It is also regrettable that the report is not paying any attention to specific groups of women apart from women of migrant origin. The reason for this might be that the government is not aware of the Committee's interpretation of the

<sup>7</sup> See also chapter 6 of this shadow report.

<sup>8</sup> Groenman 1997 and Van den Brink & Van Eerdewijk 2008, see also Hanna Beate Schöpp-Schilling, The Nature and Mandate of the Committee, in Schöpp-Schilling & Flinterman 2007, p. 258/259.

<sup>9</sup> [http://www.un.org/womenwatch/daw/cedaw/cedaw25/TheNetherlands\\_Final.htm](http://www.un.org/womenwatch/daw/cedaw/cedaw25/TheNetherlands_Final.htm).

Convention that Article 14 implies covering the needs of specific groups, including women with disabilities, the girl child and elderly women.<sup>10</sup>

*NGOs suggest the Committee asks the government why no attention is being paid, for example in the report, to the General Recommendations. A related question could be why the government does not report about specific groups like women with disabilities, the girl child and elderly women.*

### **Is lack of sex-disaggregated data due to resistance to gender mainstreaming?**

As in the previous report, most government policies cited in the 5<sup>th</sup> report lack data disaggregated by gender and ethnicity. Government policy papers and legislation has the same shortcoming. One reason is that various ministries do not understand that the disaggregated data are indispensable to check whether women are discriminated against. It is too often missing in the ministries. Significantly, several ministries explained to the Emancipation Review Commission that a gender specific approach is not necessary because general policies benefit men and women on equal footing. Whether this claim is correct or not cannot be proven since disaggregated data are not collected. The NGOs agree with the Emancipation Review Commission that these ministries seem to be in want of a basic knowledge of gender inequality.

During the meeting on the list of issues and questions, government representatives explained the lack of sex-disaggregated data by the policy shift from target-group orientation to the tailor-made policy approach benefiting individuals. The NGOs do not consider this a satisfactory explanation. It is, for example, highly problematic that no disaggregated data are kept with regard to controversial measures like the (mandatory) participation of immigrants in civic integration courses (whether 'female only' or 'mixed'), including the outcome of such courses etc. This fuels stereotyping in the public debate (see also Chapter 5).

The government report states "gender aspects will be dealt with (...) *where relevant*" (p.8 / p.18 in CEDAW/C/NLD/5 it. by the NGOs), without indicating who determines relevance. 'Appendix 4 – monitoring within the ministries' also shows that the monitoring is limited, taking place 'as much as possible',<sup>11</sup> while not even half of the ministries are included in the Appendix, suggesting the absence of a sense of urgency regarding the need to monitor.

*NGOs suggest that the Committee stresses, once again, during constructive dialogue the importance of collecting disaggregated data to gender and ethnicity, and the relevance of monitoring its policy impact.*

### **Different references to Convention text - intentional or not?**

It is confusing that the language in the government report paraphrasing or summarising the articles of the Convention is different from Convention-text. The NGOs are not sure whether this slightly different emphasis is intentional - implying a different interpretation of the obligations under the Convention.

*The Committee might wish clarification about the government's interpretation of its obligations under the Convention.*

## **2. Policies Promoting Gender Equality and Gender Mainstreaming**

### **New impulse for emancipation policies not yet visible everywhere**

Soon after the previous Concluding Comments (CEDAW/C/NLD/CO/4), a new government took charge. Since then, gender equality and gender mainstreaming have definitely risen on the agenda. One of the positive aspects of these Concluding Comments involved Dutch international assistance and bilateral programmes designed to promote and protect women's rights. The new government even decided to step this up by making it one of the four priorities of its development cooperation policy. The NGOs commend the government on this. At the same time, there are considerable differences between ministries in prioritising gender equality and/or gender mainstreaming, as revealed by the Emancipation Review Commission. Some ministries responded quite defensively to the recommendations of the commission.

<sup>10</sup> Hanna Beate Schöpp-Schilling, The Nature and Scope of the Convention, in Schöpp-Schilling & Flinterman 2007 p. 18.

<sup>11</sup> This applies to the Ministry of Social Affairs and Employment – from Chapters Art. 1&2, 3, 4&11 in part 2 of this shadow-report it is clear that this is not very often.

Others have no targets and objectives whatsoever. Some ministers, for example the Minister of Health, Welfare and Sports, even formulated new objectives and activities.<sup>12</sup> In its answer to Q 6, the government draws too rosy a picture of the commitment of each ministry in achieving de facto equality between men and women. Concrete examples of shortcomings will be discussed in Part 2.

*The NGOs suggest the Committee requests a detailed overview of the recommendations of the Emancipation Review Commission and the government's policy view, per ministry.*

### **Fostering dialogue with civil society about Gender Mainstreaming**

A good example of fostering dialogue with civil society was the *Taking Stock* seminar at the Ministry of Foreign Affairs in May 2009: this was a dialogue about gender mainstreaming between civil servants, NGOs and academics.<sup>13</sup> The NGOs think that a similar approach, conducting a dialogue between the ministry of justice, police, Public Prosecutor's Office, NGOs and academics could be very fruitful in the field of domestic violence.<sup>14</sup> Other ministries might benefit from such meetings as well.

*The NGOs suggest that the Committee asks whether the government will endorse a dialogue between relevant governmental agencies, NGOs and academics about gender mainstreaming domestic violence policies.*

### **Development of Emancipation Memorandum without consultation**

In the past, broad consultations always formed part of the process of drafting new policies with respect to promoting gender equality. Several State Advisory Councils, for instance, commented on the draft of the Multi-year Emancipation Policy Plan 2000-2010. In addition, nearly forty NGOs sent in submissions for consideration. The Emancipation Review Commission also involved NGOs and experts from advisory councils in gender mainstreaming review processes. The creation of the Emancipation Memorandum in 2007, by contrast, took place without consultation with a single advisory council. Consultation with NGOs was limited to one meeting in which the NGOs could present short statements. After the Memorandum was published, only a few NGOs wrote comment. It made obvious the effects of the disappearance of expert centres for gender equality due to the shift in subsidy policies. In general, there is a feeling that the government hardly acknowledges the role of women as actors. It seems to target (some) women, without involving them as such. The Memorandum was extensively debated in Parliament and gave rise to many motions. The main criticism was lack of ambitions. In the chapters on individual articles of the Convention of this document, NGOs will make more specific comments to the (sub) objectives of the Emancipation Memorandum.

*The NGOs suggest the Committee asks the government why it decided not to engage into a consultation process, as would be logical in implementing the Beijing Platform for Action.*

### **Government responsible for the elimination of discrimination**

Reading the answer to Q 6, the NGOs wonder whether the government is fully aware of the obligations it has under the CEDAW-Convention. It is particularly unclear as to why the implementation of the Convention is only mentioned under task No. 4. The NGOs think the Convention is "the *general framework for gender equality policy*". It is not enough "to *encourage and support the promotion of gender equality in society*". 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. It is not sufficient to take 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, organisation or enterprise*" (art. 2 e).

*The NGOs urge the Committee to engage with the government in a discussion of its obligations under CEDAW and the tasks of the coordinating minister for gender equality.*

<sup>12</sup> *Parliamentary Papers II* 2007/08 30 420 nr. 114. This will be discussed in chapter Article 12.

<sup>13</sup> The seminar is part of the joint On track with gender project, see <http://www.ontrackwithgender.nl>

<sup>14</sup> Römken 2008

### **Independent assessment of revitalised (gender mainstreaming) policy?**

The NGOs are pleased by the announcement of an (internal) mid-term review of the objectives of the Emancipation Memorandum and of the state of affairs with regard to gender mainstreaming. It would thus be interesting to know whether the government still adheres to the cabinet's opinion with regard to gender mainstreaming formulated in 2001, in which a clear role was foreseen for civil society, apart from the preconditions and responsibilities within the government's bureaucracy.

*The NGOs wonder whether the government also envisages an independent assessment at mid-term or later. They suggest the Committee asks the government. In constructive dialogue, the government can hopefully explain how it is implementing General Recommendation 6, more specifically with respect to effective national machinery with adequate resources, commitment and authority "to advise on the impact on women of all government policies".*

### **Gender budget analyses and gender impact assessments vanish**

Though the Minister of Emancipation advised Parliament to consider it his responsibility to encourage his colleagues to undertake gender budget analyses and gender impact assessments, he has not been very successful in his efforts so far.<sup>15</sup> No use of these instruments has been commissioned. This is disturbing since a recent evaluation of the successes and failures of both instruments pointed at "*weak political support at the senior levels within bureaucracy and the political system*". The authors also concluded that there was no clear governmental support and continued "*There has been a poor fit between the feminist frames of equality officials and gender experts and the gender-blind policy frames of other players.*"<sup>16</sup>

*The NGOs suggest the Committee invites the government to comment on the evaluation of the successes and failures of gender budget analysis and gender impact assessments as instruments.*

### **No support among NGOs for shift in the subsidy policies**

The NGOs are positive about the increase in funds to support the emancipation process. Neither the 5<sup>th</sup> report, nor the answer to Q 6, mention that the additional budget is *both* for the advancement of women *as well as* to support the emancipation of Lesbian, Gay, Bisexual and Transgender people (LGBT). The NGOs appreciate the fact that Lesbian and Bisexual Women and Transgenders have acquired access to subsidies, though. But they explicitly disapprove of the shift from institutional funding to project subsidies, particularly to the extent the government has done this. They do not share the opinion that women's organisations and NGOs in the Netherlands should be totally financially sustained by their membership and constituency.<sup>17</sup> This is unfair regarding the achievements and contribution of NGOs. The government disregards the importance of autonomous women's organisations noted in the Beijing Platform for Action (chapter G). The preparation of this shadow-report was seriously hampered by the fact that most of the expert centres for gender equality and women's human rights have vanished due to loss of their core funding. In the slipstream, focal points and gender experts in some other institutions and NGOs seem to have disappeared as well.

In its answer to Q 6, the government states it is providing an adequate knowledge infrastructure, but fails to mention that both remaining institutions had to face two more "efficiency-cuts" and are no longer allowed to criticise government's gender equality policies. Another objection against the shift in the funding and subsidy policy, described in the government's report (p. 10 / p. 20 in CEDAW/C/NLD/5) and the answer to Q 2, is that the subsidy is mainly awarded to professional (profit) organisations (not NGOs) and the like for projects targeting 'vulnerable women' (not 'disadvantaged women'), without the meaningful participation and influence of the women themselves. The NGOs are of the opinion that empowerment of women means (amongst others) giving women a voice (and a say). Only in

<sup>15</sup> *Parliamentary Papers II* 2007/08 30420 nr. 61 p. 3

<sup>16</sup> Roggeband & Verloo 2006, p. 629. See also Beijnenbergh et al 2009, Davids, Van Driel & Parren 2009, Verloo 2009

<sup>17</sup> *Parliamentary Papers II* 2007/08 30 420 nr. 119, p. 1 (letter of the minister responsible for coordination of emancipation policy)

that way can projects achieve sustainable results.

*The NGOs do not share the optimistic view of the government about transferability and follow-up of the 163 project subsidised under the subsidy-scheme, and suggest the Committee again raises the issue of core funding for women's rights organisations and civil society.*

### **Special women's vocational training lost through subsidy shift**

Before the shift in subsidy policies away from core funding to women's rights organisations, to a smaller project-subsidy budget, women's vocational training institutes, co-funded by the EU, received funding from the government. Neither the report nor the answer to Q 2 gives attention to the fact that this policy shift also meant that this specialised and successful approach in women's vocational training ('vrouwenvakscholing') was forced to close down. The government does not seem to develop any special policies with respect to unskilled women; notwithstanding the fact that they face the highest levels of unemployment. Existing research has shown that specialised vocational training for adult women leads to far better results in their achieving economic independence than other reintegration instruments (see also paragraph Art. 3.6 and paragraph Art. 10.3).

*The NGOs suggest the Committee asks the government why it is silent about this regrettable loss of women's vocational training.*

### **3. Discrepancies in the Dutch government's policies at home and abroad**

*The NGOs notice discrepancies in the government's foreign policies vis-à-vis domestic policies. They are worried about the inconsistencies and ask the Committee to address these with the government.*

#### **Different appreciation of the role of women's rights organisations**

One of the emerging strategies of the Ministry of Foreign Affairs is to make additional resources available for equal rights for women and their empowerment (see 5<sup>th</sup> report p. 25/ p. 48 in CEDAW/C/NLD/5). The government acknowledges that the one-sided emphasis on gender mainstreaming delivered inadequate results, since the focus on women's rights and empowerment had declined. This leads to an interesting apparent inconsistency in the government's policy approach. One ministry (Foreign Affairs) considers the role of women's organisations and NGOs in other countries of crucial importance for the promotion and protection of women's rights. Most of the 70 million budget targeted at gender is committed to this.

The other ministry<sup>18</sup>, responsible for domestic gender equality policies, seems to disregard women's organisations and women's rights NGOs: hardly any funding is available and almost no consultation takes place. While the Ministry of Foreign Affairs acknowledges the need for a critical mass that can hold governments, social partners and other institutions accountable for achieving de facto gender equality, the existing women's rights structure in the Netherlands has been broken down over the last years. It's telling that the NGOs which had the expertise for drafting this shadow report on behalf of all NGOs wishing to contribute have disappeared. The production of the CEDAW-shadow report is now dependent on a project subsidy.<sup>19</sup>

*The NGOs suggest the Committee addresses the apparent double standards applied by different ministries regarding the role of women's rights organisations in constructive dialogue with the government.*

#### **Promotion of LGBT-rights and the Yogyakarta Principles**

In 2006/7, an expert group of esteemed international human rights specialists drafted an elaborate charter applying existing human rights law provisions to issues of sexual orientation and gender identity.<sup>20</sup> The experts systematically worked through human rights provisions accepted by and binding for a majority of UN member states and assessed the implications

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18 Ministry of Education, Culture and Science

19 The other activities of the Dutch CEDAW Network are not funded by the government.

20 Amongst others: Swiebel 2009

for LGBT individuals. At several international human rights' fora, the Dutch government supported these so-called Yogyakarta Principles.

*NGOs are interested to know how the government applies the Yogyakarta Principles in its own country. Did it discuss a work programme with appropriate LGBT NGOs at home? Why was the government not willing to change its sterilisation requirement for transgenders, despite NGOs urgings, until the Commissioner for Human Rights of the Council of Europe recommended doing so (see Chapter Art. 12). Is the government willing to discuss this with the Committee?*

#### **Addressing the needs of the girl child abroad**

*“The Dutch government has no special actions aimed at the girl child,”* reported the government to the UNECE last March, during preparations for Beijing + 15.<sup>21</sup> In the same month, it organised an International Girl Child Conference in The Hague. *“Children, girls in particular, are the most vulnerable members of our society; they therefore especially need support to achieve their rights”* said the Minister of Foreign Affairs at this conference. He was later ‘twittering’ again about the subject and the efforts of the government abroad. In the Beijing + 15 report, the government states that it has no special policy measures in five of the twelve critical areas of concern. At international fora, the government repeatedly promotes the implementation of the Beijing Platform for Action, but it is silent on the subject at home. In this context, the NGOs consider it worrying that combating incest seems to have low priority on the agenda of the Dutch government.

*The NGOs suggest that the Committee enquires why the government does not implement several of the critical areas of concern of the Beijing Platform at home, including improving the position of the Girl Child and combating incest. “The significant synergy between the substantive content of the Convention and the Beijing Platform for Action” (CEDAW reporting guidelines I 1.1) seems lacking in the Netherlands – the Committee might also wish to address this in constructive dialogue.*

#### **Combating violence against women abroad - domestic violence at home**

The NGOs appreciate that, at the international level, the Dutch government takes a very active role in the development of strategies and programmes against violence against women. At home, however, despite several recommendations of the Committee, despite extensive lobbying by women’s rights NGOs, domestic violence is still addressed as a gender-neutral issue, awaiting more research before deploying strategies to combat sexual violence. The NGOs elaborate on this subject in Chapter Art. 1 & 2.

*The Committee could ask the government’s views: is its first responsibility really with the women confronting (sexual) violence elsewhere in the world? Why not put the same effort into adequate national policies for combating violence against women?*

#### **4. Status of CEDAW**

*The Dutch NGOs remain concerned about the government’s view with respect to the status of the Convention in the domestic legal order, including the status of the CEDAW-Committee, its views regarding communications under the Optional Protocol and its concluding observations.*

#### **Instruction to state solicitor not to acknowledge direct effect of CEDAW**

Given the Dutch legal system, the government is correct in stating that the question of whether a stipulation of the Convention is binding to all parties is, in the final instance, determined by Dutch courts in individual cases (p. 11/12 / p. 22/23 in CEDAW/C/NLD/5). In two recent court cases a major issue was whether or not (particular) CEDAW provisions were directly applicable. In both cases, the state solicitor held that CEDAW has no direct effect. The first case was against the state with regard to its funding of the SGP, the political party which excludes women from full membership. See government report (p. 63/64 / p. 118/119 in CEDAW/C/NLD/5). The second dealt with the 2004 abolishment of maternity benefits for entrepreneurs. The State again took the view that (the provisions of) CEDAW

<sup>21</sup> Directorate for Emancipation 2009 no page (p. 15 under L). This report did not meet the reporting guidelines in the Questionnaire to Governments either.

cannot have direct effect. The State even referred to CEDAW Communication No.3/2004 *Nguyen/The Netherlands* to underline the discretion state parties have with respect to 'all appropriate measures', but quoted selectively.<sup>22</sup>

*The NGOs urge the Committee to ask the Dutch government why it instructed the state solicitor to hold that the Convention has no direct effect and why the state solicitor quoted CEDAW Communication No.3/2004 selectively.*

### **Dutch individual complaints according to the Optional Protocol**

In its answer to Q 4, the government reports on the four individual complaints that have been filed. NGOs view the fact that three individual complaints have been found inadmissible because of "failure to exhaust domestic remedies" as an illustration of the lawyers' ignorance of the possibilities under the Optional Protocol. NGOs find it illustrative that two of those three claimed to be trafficking victims, and consider this as indicative of the need for improvement of the protection the Dutch system offers to victims of trafficking (see Chapter Art. 6).<sup>23</sup>

As to the first Dutch case under the Optional Protocol, which was found admissible (Communication 3/2004), NGOs do not agree with the government's conclusion that it has no consequences for the Netherlands. As with other jurisprudence, not only the final outcome (violation or not) but also the considerations of the CEDAW-Committee, are relevant. Moreover, in their view the state's solicitor ought to have requested a full explanation of why the Court (and the Court of Appeals) disagrees with the view of the CEDAW-Committee. Only in that way can the judiciary and government show that they take the Optional Protocol seriously.

*The NGOs urge the Committee to ask the government whether it is willing to make a legal provision requesting full explanations when the judiciary disagrees with the view of the CEDAW-Committee.*

### **Low usage of CEDAW in court cases**

In general, only in very few court cases is reference made to CEDAW, compared with the International Covenant on Civil and Political Rights. Since the year 2000, just over 20 cases could be identified, five relating to the political party SGP, a few on maternity benefits for entrepreneurs and the one described below. The Dutch government reported that the ICCPR was cited in 148 cases in 2006, 152 in 2007 and 163 in 2008.<sup>24</sup> Several feminist lawyers have been approached to find an explanation, and all agreed that hardly any attention (if any at all) was being paid to CEDAW in their specialised training. An example of how the judiciary generally acts is the short case to extend the public screening-programme for breast cancer to women beyond the age of 75. This programme is now limited to the age group 50-75, while the category 75+ runs the biggest risk. Reference was being made to art. 1 and 2 of CEDAW, as well as to other (inter) national legislation. The lawsuit was lost and appeal is still pending. The judge did not discuss the applicability of CEDAW.

*The NGOs wonder whether an obligation for judges to justify the (non) applicability of international legislation could help. The Committee could ask the government's view about this.*

### **Referring to CEDAW when implementing gender equality policies?**

NGOs do not share the government's view that there is no need to refer to CEDAW in its implementation of gender equality policies. A second problem is that local and provincial authorities seem to take very little responsibility for implementing CEDAW. In addition, the national government completely fails to monitor the achievements of provincial and local authorities in eliminating discrimination against women.

<sup>22</sup> The Women's Rights Fund Clara Wichmann is currently seeking legal advice so as to appeal to the Supreme Court. The NGOs support that appeal. The judgement will be discussed in paragraph Art. 4&11.2.

<sup>23</sup> CEDAW/C/42/D/15/2007 (Zhen Zheng Zheng) can be accessed via <http://www2.ohchr.org/english/law/jurisprudence.htm> (last visit 22-09-2009) and is included in Jaarbericht 2008 p. 26-27. 9/2005 (Harotjoenian) and 14/2007 (Hu Lin Ping) cannot be found.

<sup>24</sup> CCPR/C/NLD/4/Add.1 A2, in response to CCPR/C/NLD/Q/4

Using the search machine of the Parliaments' website<sup>25</sup>, an assessment was made of how many times reference was being made to the Convention in parliamentary papers. The outcome was disappointing: in no legislation was the Convention mentioned. In 2008, the Convention was mentioned 23 times in parliamentary papers, mainly due to activities by the Dutch CEDAW-Network, never on the initiative of the government (except for sending the 5<sup>th</sup> report to Parliament). In 2007, references amounted to 34: the Emancipation Review Commission's reports were submitted to Parliament, and government informed Parliament about its constructive dialogue with the Committee and the Concluding Comments. The rest were a result of activities undertaken by the Dutch CEDAW Network. In most years, the International Covenant on Civil and Political Rights is better represented in parliamentary activities; it seems to play a more explicit role in legislation. For comparison: In each of the last few years far more than 150 references were made to the ILO convention.

*The NGOs suggest the Committee asks the government to justify its lack of reference to the Convention in legislation and in correspondence with Parliament.*

#### **No active distribution of General Recommendations of CEDAW**

General Recommendations 25 and 26 have not been translated into Dutch, nor sent to Parliament and (presumably) to the ministries. Though the 5<sup>th</sup> report claims that Recommendation 25 on article 4 has been translated, NGOs noted that it has not been posted on the internet.<sup>26</sup> Moreover, neither Parliament nor other ministries have been informed about General Recommendation 26 on Women Migrant Workers (see also the chapters Article 4/11 and 6 of this shadow report). In its answer to Q 5, the government remains silent about the General Recommendations.

*The NGOs suggest the Committee requests the government to clarify its position regarding General Recommendations of CEDAW.*

#### **In-depth assessments of the implementation of CEDAW abolished**

Until a few years ago, at regular intervals, the government commissioned independent experts to carry out in depth research on the manner in which specific articles of the Convention could be interpreted and implemented. This was an excellent way of promoting the Convention, because it encouraged debate among experts, NGOs, civil servants, the government and the Parliament. Although the previous government did not bother to formulate a view on the recommendations of two studies about article 5A in 2004 (effect on social security, and significance for the elimination of structural gender discrimination), the NGOs are disappointed that the new government still disregards the studies and accompanying recommendations. Moreover, the present government does not seem to be prepared to restore this tradition of in-depth research. The NGOs have noticed though that members of the CEDAW-Committee appreciated the in-depth researches.<sup>27</sup>

*The NGOs suggest the Committee addresses the possibility of once more promoting the Convention via in-depth assessments in conjunction with the next item.*

#### **National reports shrink to policy-oriented single-theme research**

In its answer to Q 5, the government announced the theme of the next 'national report' in respect of the CEDAW-Convention: the health of women from ethnic minorities. Although the NGOs welcome more research into this matter, they have serious reservations about the reduction of the 'national report' to a policy-oriented single-theme research.

At ratification, Parliament requested a national report every four years on the implementation of the Convention, alternating with the 4-yearly reports to the Committee. The rationale was that the government should not only account to the Committee, but also to the Parliament. By assigning the national report to an independent expert committee, the government organised a critical assessment of its implementation efforts.

However, after two critical but constructive reports, the government has abandoned this approach, along with in-depth studies on the implementation of the Convention, just leaving a

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25 <http://www.tweedekamer.nl>

26 <http://www.minocw.nl/emancipatie/589/Emancipatiebeleid-internationaal.html>

27 Hanna Beate Schöpp-Schilling, Impediments to Progress: the Formal Labor Market, in Schöpp-Schilling & Flinterman 2007 p.178, footnote

policy-oriented single-theme research unrelated to the obligations under the Convention. This means no independent assessment of the implementation of the Convention is being financed except for the shadow report. The NGOs notice that Parliament is confused about the reduction of the national reports to single theme-reports, while the government is not prepared to discuss with Parliament its report to CEDAW before the Committee has published its concluding observations.<sup>28</sup>

*The NGOs regret that the Dutch government has abandoned its daring and unique strategy of inviting independent critical observations about its implementation of the CEDAW-Convention. They urge the Committee to request the rehabilitation of the national reports and in-depth assessments, or at least one of those.*

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28 The NGOs note that there is some confusion in the answers of the government as well: contrary to the answer to Q 5, the government did not introduce a national report in 1999. The first national report was published in 1997 (Groenman 1997), the second in 2003 (Marchand 2003). The amendment read “to send every four years to the Parliament a report about the implementation in the Netherlands of CEDAW”. In their explanation, the politicians added that the views of the Equal Treatment Commission, the Emancipation Advisory Council and the NGOs ought to be included in this national report.

Another indication of confusion within the government is to be found in the Beijing + 15 report: “Every two years the Minister for Emancipation also makes a national report for Parliament, based on 1 or more articles of the UN-Women’s Convention. Always in close operation with the ministry that is responsible for the policy area that is concerned.” Directorate for Emancipation 2009, no page number (p.6).

## Part 2 – Comments per article of the Convention

### Article 1 & 2 – Elimination of all discrimination against women

#### 1. Violence against women

##### **Too narrow focus on violence against women of migrant origin**

Although the government provides at least some police figures on domestic violence in its response to Q 11, NGOs are disappointed that these figures are not disaggregated by ethnicity. This might fuel what NGOs observe as a narrow (cultural) focus on honour-related violence and female genital mutilation (FGM) when it comes to violence against black, migrant and refugee women.<sup>29</sup> This is misleading, since it suggests that other, better-known forms of violence against women, such as domestic violence and incest, are not culturally embedded. In addition, NGOs want to point out that the process of policy-making about combating or preventing domestic violence often excludes women of minority groups. This results in solutions that are offered to them, but not developed with them.

*NGOs urge the Committee to encourage the government to develop a consistent and tailored policy to combat gendered violence against women from different backgrounds based on facts and figures, not on unfounded assumptions of prevailing practices within minority communities.*

##### **Policy on domestic violence in progress – time for an update?**

The government has made considerable progress in creating a national framework for combating domestic violence. Concerns have been expressed, internationally by the CEDAW Committee (twice) and the Human Rights Committee, and nationally by the Emancipation Review Commission (VCE) about the gender-neutral formulation of Dutch policy regarding domestic violence<sup>30</sup>. The government has therefore commissioned expert research on gender related violence.<sup>31</sup> The NGOs commend the government on that, but do not understand why it is taking so long to come up with a standpoint, since the research was published since autumn, 2008. In answer to Q 10, the government indicates that it is analysing what the results imply for their new Action Plan on domestic violence to 2011. In answer to question Q11, the government describes the large-scale research project on domestic violence and mentions that it expects the results to be available at the end of 2009/ begin 2010.

*NGOs suggest the Committee asks what the government's standpoint is on the expert research into gender related violence, and what the outcomes are of the large-scale project on domestic violence.*

##### **First experiences house prohibition of perpetrators**

As an answer to Q 12, the government explains the legislation allowing a temporary restraining order to be imposed on perpetrators of domestic violence. NGOs regret that only perpetrators of domestic violence receive free legal aid, whereas victims do not.<sup>32</sup> From the perspective of discrimination and the Convention, this is not justifiable. Not only is it important from the perspective of victims' equality with respect to law, also from the perspective of empowerment and recovery of control over one's life. That is at stake when there is a restraining order: this lasts only 10 days. It is important that, during that period, victims prepare to take a well-informed decision about what further steps she may wish to take.

*NGOs are interested to know if the government is willing to incorporate into the legislation allowing temporary restraining orders, not only that the perpetrator of domestic violence, but also that those remaining in the house (the victim(s)) are entitled to free legal advice in all relevant areas of law.*

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29 Maas Geesteranus, 2008, p. 35

30 CEDAW 2007 para 19; CEDAW 2009 para 10. See also Visitatiecommissie Emancipatie, 2007 and UN 2007

31 De Boer, 2008

32 De Boer, 2008, p. 33

### **Women more often than men victims of elderly abuse**

It is estimated that in the Netherlands more than 130,000 elderly people are victims of abuse.<sup>33</sup> More than 75 per cent of elderly abuse is directed at women. Perpetrators are often partners, children, neighbours, friends or helpers. Psychological abuse is most common, in addition to physical violence and financial exploitation. The number of reports of elderly abuse has increased significantly, from 366 in 2007 to 662 in 2008, an increase of 81%. Service providers are more aware of signals of elderly abuse and tend to report this more often. In 2008, professionals (such as policemen or elderly advisors) reported 71% of all cases. In other cases, relatives made the report. In November 2008, Parliament requested that the government makes the reduction of elder abuse a top priority.<sup>34</sup>

*NGOs suggest the Committee asks whether the government agrees that reduction of elder abuse F/M is a top priority, and what measures it has developed to prevent and combat this.*

### **Policy paper announced on prevention of sexual violence**

NGOs think important progress has been made since the government has reinstated sexual violence on its agenda. In July 2009, a research on sexual health in the Netherlands showed that sexual violence occurs very often, across all demographic subgroups. One-third of all women and one in twenty men have been victims of some sort of sexual aggression (verbal violence excluded) at some time in their lives.<sup>35</sup> Twelve percent of women and nearly three percent of men indicate that they have been raped. Only few victims report their experience of sexual violence to the police (one in six female victims and one in sixteen male victims). Prevention should have the highest priority, according to researchers. Up till now a national policy on combating sexual violence is lacking. The Ministry of Health, Welfare and Sport has announced it is working on a policy paper about sexual health including (amongst others) prevention of sexual violence and the protection of victims of sexual violence. NGOs hope and expect that it will also focus on sexual violence in institutions such as Asylum Seekers' Centres, youth and health care.

*NGOs suggest the Committee asks the government for an update on the promised policy paper about sexual health, including the prevention of sexual violence.*

### **Gender-sensitive asylum procedures in progress**

After much time and effort by various national and international organisations, the government indicates in answer to Q 22 that the accelerated asylum procedure of 48 hours will be replaced in 2010 by a general procedure of eight days. NGOs commend the government for its recognition of the difficulties the accelerated asylum procedure of 48 hours causes for victims of traumatic incidents, such as sexual violence.

### **'Many residence permits' granted to victims of violence?**

In answer to Q 13, the government mentions that victims of trafficking, domestic violence and honour-related violence have 'several possibilities to obtain residence permits to protect them against further violence, irrespective of their immigration status and ethnic origin'. NGOs will discuss some major difficulties concerning these possibilities for victims of trafficking in article 6. Perhaps the government could elaborate on the number of residence permits provided based on humanitarian grounds to victims of domestic violence – also linked to honour killings and FGM, as the Minister of Justice recently indicated to the Human Rights Committee that 'many residence permits had been granted on that basis.'<sup>36</sup>

*NGOs urge the Committee to request the government to provide facts and figures on residence permits provided to victims of domestic violence on humanitarian grounds.*

### **Honour-related violence: what are the facts and figures?**

Perhaps the outcome of the large-scale research project into domestic violence, mentioned in the government's answer to Q 11, might provide an answer to Q 14 as well. NGOs think it is

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33 Movisie, 2009

34 *Parliamentary Papers II* 2008/09, 31 700 XVI, nr. 55

35 Rutgers Nisso Groep, 2009

36 Human Rights Committee 2009 p. 3

rather strange (to put it mildly) that no data on honour-related violence can be provided, while a great deal of funds have been put into combating it.

*NGOs urge the Committee to request facts and figures on both the prevalence of honour-related violence, and on residence permits provided to victims of honour-related violence on humanitarian grounds.*

### **Prevention of Female Genital Mutilation further improved?**

In 2007, the government gave a new stimulus to combating Female Genital Mutilation (FGM).<sup>37</sup> The intensive approach 2007-2009 is directed at improving early identification and prevention, expanding the scope for prosecution, and stepping up action to combat FGM in six cities where at-risk sections of the population are concentrated. An important component of these pilot schemes is the involvement of the relevant ethnic communities themselves, and in particular the role of community organisations. NGOs commend the government for that. Prevention of FGM requires the collaboration of all parties involved.<sup>38</sup> However, according to the NGOs, some essential improvements are necessary. As noted above, there are no thorough data about prevalence of FGM in the Netherlands. Discovering the magnitude of the problem among risk groups is necessary to develop a solid basis for policy and prevention. Also, NGOs noted that a reinforcement of cooperation between preventive and judicial parties is highly recommended, as well as the willingness to report cases by professionals and communities. A last remark concerns the necessity of a broad, holistic approach to combat FGM, also across borders. There is a need for exchanging experiences and cooperation at European level, but even more with relevant African countries. In the view of the NGOs, the government should provide these conditions.

*NGOs suggest the Committee asks the government how it intends to go further in preventing Female Genital Mutilation.*

## **2. Sexual harassment less prominent in legislation**

Sexual harassment is a special form of sexual violence in which mainly girls and women are the victims, but in some cases boys and men (mostly by male perpetrators). Contrary to the impression one might get from the 5<sup>th</sup> report (p.14/ 28 in CEDAW/C/NLD/5) legislation with respect to sexual harassment was not reinforced by the change in the Equal Treatment Act M/F (ETA) of November 2006 (to implement Directive 2002/73 EC). Before this change, sexual harassment was already considered as part of the ETA, the burden of proof was shifted accordingly, and the Equal Treatment Commission (ETC) was competent to give an opinion. This was in line with other international obligations, for instance ILO Convention 111 (Discrimination).<sup>39</sup> Legal experts thought the definition of sexual harassment in the Labour Conditions Act (1994-2007) comprehensive enough. An advantage of this definition was that it considered sexual harassment a violation of human dignity and included (homosexual) men and transgender people. In the experts' opinion the new definition in the Equal Treatment Act since November 2006 (in 2007 included in the General Equal Treatment Act as well) is, unfortunately, rather limited. They think it was not necessary for a proper implementation of the EU Directive.<sup>40</sup>

The text of the new Labour Conditions Act no longer explicitly mentions sexual harassment. According to its explanatory memorandum (Memorie van Toelichting), prevention of sexual harassment is considered to be part of the employer's obligation to assess psycho-social risks in the workplace. In the view of NGOs and legal experts, this is a step backwards. This was one of the reasons for the Association of Women and Law Clara Wichmann to start the 'Sexual intimidation in the workplace' project, which was co-financed by an NGO and a university and subsidised by the Ministry (p.14/ 28 in CEDAW/C/NLD/5).

The evaluation that is mentioned in the government's answer to Q 20 reports a decrease in official complaints but an increase in incidents of sexual harassment. Experts consulted by

<sup>37</sup> *Parliamentary Papers II* 2007/08, 28 345 and 22 894, nr. 51

<sup>38</sup> Pharos 2008, p.15

<sup>39</sup> International Labour Organization 2003 ILO's Expert Committee again expressed its view that sexual harassment is a form of sex discrimination, urged governments to take appropriate measures and gave guidance about these.

<sup>40</sup> Amongst others Holtmaat 2009 (the Legal Guide to which the government report referred).

the researchers point at a probable lack of trust by victims in the outcome of a complaints procedure and fear of losing the job. The deputy Minister acknowledged in his letter to parliament that though progress was made in the formal sense, improvement in implementation and in the attitude of managers and employers was necessary.<sup>41</sup>

*The NGOs regret that sexual harassment is now less comprehensively handled in the legislation. They suggest the Committee asks the government how it assesses developments since 2004, and whether it is monitoring the effects of the new Labour Conditions Act and the change of the Equal Treatment Act. A second question could be whether the government is prepared to adapt the legislation to include a better definition. A third question could address the government's efforts to prevent and combat sexual harassment in education, sports and centres for asylum-seekers etc. A fourth question could concern the results of the information campaign (answer to Q 7) and whether an up to date evaluation had taken place or is foreseen in the near future.*

### **3. Enforcement of prevention of discrimination by Labour Inspectorate**

The previous government resisted proposals from NGOs, trade unions and political parties to give the Labour Inspectorate a role in combating discrimination. The NGOs are content with the fact that the new government abandoned this resistance and that, since August 2009, discrimination is included in employers' obligations according to the Labour Conditions Act. In the future employers have to assess the risk of stress caused by discrimination (and other psycho-social risks like work-related stress, intimidation and sexual harassment). Employers have to develop prevention-policies. The Labour Inspectorate has to monitor and enforce. Imposing fines on employers that do not comply is one of the possibilities.

*The NGOs suggest the Committee asks the government about the way in which the Labour Inspectorate implements this new responsibility regarding discrimination (budget, training, relation with other duties, reporting). The government could be requested to include sex-segregated data and other information about monitoring and enforcement by the Labour Inspectorate with respect to discrimination and sexual harassment in the 6<sup>th</sup> report.*

### **4. No motivation by Supreme Court disregarding Equal Treatment Commission**

The abolishment of the maternity benefit for entrepreneurs in 2004 (see chapter Art.4/11) did increase the number of court cases contesting invalidity insurance that provided a maternity benefit, but under restricted conditions such as a qualifying period. In most cases, the Equal Treatment Commission (ETC) gave opinions before the issue was brought to court. It extensively elaborated how national and international (EC and CEDAW) obligations had to be interpreted, and concluded that those restricted conditions led to direct discrimination. Some of the courts followed this line of reasoning, others not – no discrimination because a pregnant woman does not have a male equivalent with whom she can compare herself (!). One case was brought before the Court of Appeals and the Supreme Court. Both judged, without consultation with the EC Court of Justice, that no discrimination occurred. Very remarkable is that the Court of Appeals and the Supreme Court followed different lines of reasoning, but both ignored the ETC's extensive opinions. This is very unusual.<sup>42</sup>

In the first evaluation of the general equal treatment act (AWGB), external evaluators recommended the government include an obligation on the judiciary to explicitly justify why the ETC's view is disregarded.<sup>43</sup> The NGOs strongly supported this recommendation but government thought it unnecessary because, in its view, this already followed from the procedural requirements for the judiciary as guaranteed in the Constitution.<sup>44</sup>

*The NGOs think it is time now for the government to acknowledge it was too optimistic in assuming that the judiciary acts in conformity with an implicit constitutional requirement to explicitly justify why an opinion of the Equal Treatment Commission is disregarded. Therefore*

<sup>41</sup> *Parliamentary Papers II* 2004/05 25 879 nr. 51 p. 2

<sup>42</sup> Cremers 2008. See also Gerards & Zoontjes 2009

<sup>43</sup> Asscher & Groenendijk 1999 p. 316

<sup>44</sup> *Parliamentary Papers II* 2001/02 28 481 nr. 1 p. 26

*NGOs urge the Committee to inquire whether the government is now prepared to include such an obligation in legislation.*

### **Slow progress of reinforcement of Equal Treatment Act**

It is embodied in the law that the Equal Treatment Commission (ETC) evaluates the General Equal Treatment Act (AWGB) every five years (art. 22). The second evaluation report was published in 2005 even before the Act implementing the previous evaluation came into effect. An additional external evaluation was published in 2006. In itself, it is commendable that the Government commissions an independent evaluation from an interdisciplinary team of professors from different universities. The effect, however, seems to be even more delay in the Government's policy-formulation regarding the recommendations. A first part of the Government standpoint was made public only late December 2008, and a second part in late September 2009. The NGOs regret that only a few of the recommendations for reinforcement have been taken aboard. Especially the recommendation to extend the AWGB (and the jurisdiction of the ETC) to the actions of the government itself (including local government) is important for civil society, but the government is not prepared to do this.

It might be suspected that the reason for publishing a first part of the position can be found in the fact that, in January 2008, the European Commission (EC) had started an infringement procedure for failing to correctly implement Directive 2000/78 (EU). If not, maybe even the first part would not yet be published. One focus of EC criticism was the fact that the AWGB was not applicable to employment relations within the private household, which predominantly affects female domestic workers (see paragraph Art. 3.8). The government pays no attention to this discriminatory effect, but finally announced adaptation of the AWGB, proposing to use the same words as the Directive itself. Expert opinion is that the Netherlands was a front-runner in equality legislation in the 90s, but is slowly becoming part of the rearguard.<sup>45</sup>

*The NGOs hope that constructive dialogue with the Committee will lead to a greater sense of urgency within the government, and to the acknowledgment that Dutch equal treatment legislation should soon be brought in line with international obligations.*

### **Public campaign rather silence about pregnancy-discrimination**

In its answer to Q 7, the government does not go into detail about the sensitizing of the public about prohibited discrimination on the ground of pregnancy, child-birth and motherhood. The website [www.discriminatie.nl](http://www.discriminatie.nl) hardly contains references to this type of discrimination, though it is still common, as the ETC states as well in its Comments on the 5<sup>th</sup> Dutch Report. In paragraph 4&11.6 of this shadow report the NGOs give other examples.

Though the NGOs appreciate the public 'Anti-discrimination' campaign, its timing is rather unfortunate: six weeks during the summer holidays probably has less impact than at any other moment. In the campaign itself, the subject of pregnancy-discrimination was unfortunately not addressed. This might be a consequence of the fact that NGOs with expertise about women's discrimination have not been consulted in the design of the campaign.

The NGOs support the new cooperation between the National Bureau of Art. 1 and local anti-discrimination agencies, but a lack of adequate funding seems probable. The Committee ought to know that a government-appointed advisory group recommended twelve million euros be made available, instead of the six million that is now anticipated. Neither is the current funding directed to the Art.1 to allow it to function as a national expertise centre sufficient for it to fulfil its tasks. The European Commission against Racism and Intolerance of the Council of Europe supported this analysis in its third report.<sup>46</sup>

*The NGOs suggest the Committee requests clarification about the adequacy of the funding of the new anti-discrimination architecture. The Committee could, moreover, encourage the government to involve NGOs with expertise in women's discrimination next time, to ensure that a subject like pregnancy-discrimination is not again overlooked.*

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<sup>45</sup> For instance Terlouw & Hendriks 2008

<sup>46</sup> ECRI 2008

### **Including gender identity in the General Equal Treatment Act?**

In its Foreign Policy, the government is very active in promoting human rights. Together with France the Netherlands took the initiative with the statement on human rights, sexual orientation and gender identity that was delivered in the General Assembly of the United Nations (18 December 2008). The NGOs commend the government for that. It would be a logical step to include gender identity as a discrimination ground in the General Equal Treatment Act (AWGB). In that way, an improvement could be achieved in protecting transgender persons against discrimination.<sup>47</sup>

*The NGOs suggest the Committee asks the government whether it is willing to include gender identity in the General Equal Treatment Act (AWGB).*

### **National Human Rights Institute curtailing gender-expertise centres?**

The government has decided to establish a new National Human Rights Institute to implement the so-called Paris Principles. The idea is to locate the new institute at the Equal Treatment Commission and to merge both institutions. The NGOs support the foundation of the National Human Rights Institute, but it should not affect the mandate, the present tasks and the budget, of the Equal Treatment Commission, nor the budget of the few remaining gender expertise centres or other human rights NGOs.

*The NGOs urge the Committee to require guarantees from the government that it will not curtail the budget of the Equal Treatment Commission or that of human rights NGO, in the process of establishing the National Human Rights Institute.*

### **5. No concrete measures by the government to reduce the salary gap M/F**

The answer to Q 18 makes it, in the eyes of the NGOs, painfully clear that the government does not take concrete measures to eliminate discrimination with respect to remuneration, nor to bridge the male-female pay gap. The answer refers to the development of some instruments, accessible via the internet, that could be useful, but no information is provided about the use of these instruments by social partners, as for instance could be agreed during collective bargaining.

In its yearly Report on Equality, the European Commission named some member states that “*have addressed the gender pay gap through initiatives*”.<sup>48</sup> The NGOs are not surprised not to find the Netherlands among those member states.

*NGOs suggest the Committee asks for information about concrete results in reducing the male-female salary gap. Is the government monitoring collective agreements with respect to the use of the instruments and other activities to address pay discrimination and/or diminish the gender remuneration gap? Can the government present facts and figures, disaggregated by sex and ethnicity, in the next report?*

### **Method of research by Labour Inspectorate disputed**

The government tries to diminish the size of the gender pay gap by pointing at possible explanations for the remuneration discrepancies (p. 45/p. 85 in CEDAW/C/NLD/5 and appendix 7). In its answer to Q 18, the government refers to the twice-yearly research of the Labour Inspectorate without informing the Committee that its method of research is disputed. The ETC, for instance, has strong objections: unlawful discrimination can be hidden in the so-called explanatory factors – an example is part-time work: it is not allowed to pay part-timers a lower hourly wage than full-timers. Moreover some of the variables ‘explain’ the same phenomenon, leading to a double reduction of the gender pay gap: it is obvious that one needs less education for lower skilled jobs (so why correct twice?), part-timers almost always work in lower skilled jobs (why a double correction?) etc. According to the report, the fact that women work more often in a lower skilled jobs reduces the explained remuneration gap, but that disguises the fact that remuneration discrepancies are greater in the higher echelons. Another point of criticism is that it is not clear what the research monitors: is it (autonomous) development of male-female remuneration, is it the outcome of measures by the government or ....?

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<sup>47</sup> Vennix 2009 Chapter 10

<sup>48</sup> European Commission 2009, p. 10

*The NGOs point at recent comparative European data that suggest an even higher gender pay gap in the Netherlands than the Labour Inspectorate reports: the Netherlands is among the countries in which the gender pay gap is the widest.<sup>49</sup> That ought to justify an equal pay campaign in which the NGOs are fully prepared to participate. The NGOs hope that the Committee is willing to convince the government of the necessity for an equal pay campaign, especially in the light of the very limited exposure of Equal Pay Day.*

### **Equal Pay Day very bleak compared to Belgium example**

The government continually refers to the annual Equal Pay Day organised in conjunction with social partners. The (temporary) Equal Pay Working Group introduced the event a few years ago, inspired by Belgium. Compared to our southern neighbours the picture is, however, rather bleak. Dozens of meetings in every province involving thousands of people and a huge media coverage in Belgium as against one meeting with far less than a hundred participants (hardly any being representatives of the social partner organisations) without media coverage – in other words: the exposure is very limited. The content of the event was of good quality in itself, especially the presentation of a joint project of the Equal Treatment Commission and some hospitals, but the fact that no follow-up regarding the distribution of the good practices was organised diminished the possible effect, and none of the participants seemed to be prepared to follow the example.

### **Finally, role in enforcement of Equal Pay for Labour Inspectorate?**

It is common knowledge that victims of discrimination in the workplace are even more hesitant to take legal steps during economic recession and rising unemployment – for fear of losing their jobs in the next reorganisation even though victimisation is not allowed. This is in particularly so in the case of equal remuneration, often complex and time-consuming procedures extending the period of feeling exposed to victimisation. Therefore NGOs are positive about the fact that, finally at the end of 2008, the government has decided to give the Labour Inspectorate a role in enforcement, which according to art. 21 of the Equal Treatment Act M/F (WGB M/V) had been possible for many years.<sup>50</sup> The NGOs hope that the omission of this new enforcement role in the answer to the Committee's question (Q 18) is not an indication of second thoughts.

*The NGOs suggest the Committee asks for an assessment of the results (with disaggregated data) of the equal pay enforcement by the Labour Inspectorate in the 6<sup>th</sup> government report.*

### **Government missed opportunity to reduce gender pay gap in financial sector**

As in many other countries the government had to support several financial institutions affected by the credit crunch. It used this to intervene in the widely criticised bonus-culture of top-management. In return for financial support, government appointed a supervisor whose tasks included developing proper payment-structures for the (top) management. The gender pay gap in the financial sector is huge, bigger than in most other sectors. The government could have used this opportunity to give the supervisors the assignment to also develop an equal pay policy and use the instruments developed in the reporting period – a quick scan and a management tool for equal pay.

*The NGOs suggest the Committee asks the government why it has not so far used the unique opportunity caused by the credit crunch to address the gendered remuneration discrepancies in the financial sector and whether the government is prepared to do so.*

### **How to keep equal pay high on the agenda in the economic crisis?**

Unlike within the documents before the Committee, as well as on other occasions such as the discussion in parliament about the Emancipation Memorandum, the government puts a lot of emphasis on the responsibility of social partners in reducing the remuneration gap. The NGOs are not aware of any concrete monitoring of activities of social partners and results, for instance in collective bargaining. This does not even arise during the government's bi-annual assessment of collective bargaining agreements. That is why the NGOs suggested that the

<sup>49</sup> <http://ec.europa.eu/social/main.jsp?catId=6858&langId=en> last visited 17-09-2009

<sup>50</sup> *Parliamentary Papers II* 2008/09 27 099 nr. 20

Committee should raise the monitoring issue.

*The NGOs are interested to know how the government intends to tackle the real risk that equal pay policies are evaporating with the economic crisis: how does the government intend to prioritise the bridging of the equal pay gap by the social partners in sectors and companies? Could it be a possibility to create covenants with the social partners?*

#### **6. Changes in social security legislation indirectly discriminatory**

In the previous shadow report, the NGOs expressed the fear that the major changes in social security legislation would affect women more than men (p. 26 and p. 83-84).

*NGOs note that social security is not addressed at all in the 5<sup>th</sup> report. The NGOs think this is a major shortcoming of the report, which the Committee could address during constructive dialogue.*

#### **Many more women lost (part of) their Invalidity Benefit (WAO)**

Worrying as well is the fact that the Minister of Social Affairs did not present gender-segregated figures in his recent report on the re-examination of the beneficiaries of the former Invalidity Insurance Act (WAO).<sup>51</sup> These WAO-beneficiaries had been re-examined according to new, stricter criteria, which are also applicable for the new Invalidity Insurance legislation (WIA/WGA). The NGO raised suspicions in the previous report that the new criteria would be more disadvantageous to women for several reasons: a strict emphasis on 'objective diagnoses' not taking the gendered health differences into account (see also the chapter on article 12). Another of the stricter criteria disadvantages claimants who worked part-time before invalidity. Consequently, this has affected mainly women. Confidential information proved that, to a significant degree, part-timers more often lost (part) of their WAO-benefit.<sup>52</sup> Experts from NGOs did some digging in the figures and discovered that comparatively more women than men have lost their benefit (67 – 33 per cent). The number of reduced benefits had the same ratio.<sup>53</sup> The effect of the re-examination seems indirectly discriminatory, but this has received no attention at all!

*The NGOs suggest the Committee asks for clarification: did indeed more women than men lose part or all of their disability benefit. If so, can the government explain how it thinks this could be in compliance with the Convention?*

#### **Women overrepresented among new (WGA/WIA) Invalidity beneficiaries**

One of the researchers of the Employee Insurance Schemes Implementing Body (UWV) confirmed that other factors relating to the weaker position of women in the labour-market, diminish the chances for women of receiving a disability-benefit (now WGA/WIA) as well – for instance earning less than men (the gender pay gap), the requirement of losing at least 35 per cent of their earnings capacity and the disadvantages for part-timers mentioned above.<sup>54</sup> Nevertheless the influx of women in the new disability scheme is higher than their relative labour-market participation – 50 per cent and 43 per cent respectively.<sup>55</sup> According to the NGOs this ought to be enough stimulus for the Minister of Social Affairs to commission research at least into the deeper causes for these gender differences.

*The NGOs hope the Committee can convince the government of the need for research into the deeper causes of the gender differences under the new (WGA/WIA) Invalidity Law.*

#### **No figures available on impact of tightening unemployment-benefit**

Whether expectations that women would be disadvantaged by the tightening of qualifying requirements for unemployment benefit (WW) have become reality the NGOs cannot tell, because the government does not provide any information whatsoever, nor does the Employee Insurance Schemes Implementing Body (UWV). The fictive compensation for non-employment due to caring for children under the age of 5 respectively 12, for instance, is

<sup>51</sup> *Parliamentary Papers II* 2008/09 264 48 404 (Letter to parliament dated 22 juni 2009) + Annex

<sup>52</sup> Via email obtained 16 October 2006

<sup>53</sup> Van der Burg & Maurits (2009)

<sup>54</sup> Email correspondence with ms Carla van Deursen (19/20-06-2009)

<sup>55</sup> *UWV Kwartaal Verkenning* 2008-I, April 2008

drastically diminished, but no insight is provided as to how this affects women's (and some men's) duration of unemployment benefit.

Digging into research about the present state of affairs, NGO experts found some outcomes which justify a request for a more thorough (gender-sensitive) report to parliament, as well as inclusion in the CEDAW-reporting. Women with a WW-unemployment benefit have substantially less chance to become employed again before the end of the benefit – a difference with men of 10 percentage-point! The chances diminish further when the unemployed face health problems - for instance having lost (part of) the disability benefit WAO (see above). Those female WW-beneficiaries who succeeded in finding a new job more often worked at a lower qualification level than before (compared to men). As expected in the previous shadow report, the effect of the abolishment of the longer-term allowance is that women, especially those who worked part-time, have to fall back on the incomes of their partners.<sup>56</sup>

*The NGOs conclude that enough evidence exists to request accounts about the effects of the unemployment legislation with disaggregated data. The Committee could, moreover, request inclusion of social security issues in the next government reports.*

### **Gender differences in disability benefit for handicapped young persons**

For those people who were occupationally disabled before they could enter the labour market, special social security is applicable: the Disablement Assistance Act for Handicapped Young Persons (Wajong). The new government envisages major changes to improve this group's labour-market participation, without considering any gender impact assessment ex-ante. NGOs think this is strange since UWV-research provide indications that there are major gender-biases in the present Wajong-practices. Men with a Wajong-benefit participate in the labour market more often than women (32 versus 22 per cent); men more often receive support from a job-coach. The UWV-researchers suggest more in-depth research to explain these differences and improve the participation of female Wajong-beneficiaries.<sup>57</sup>

*The CEDAW-obligation to achieve substantive equality obliges, in the view of the NGOs, gender impact assessments (GIA) to be carried out ex-ante as well as ex-post. Such a GIA on disability benefits for handicapped young persons (Wajong) should entail, amongst others, the way maternity (-leave) and consequences of motherhood are taken into account. The NGOs suggest the Committee invites the government to explain its view about the gender differences in the Wajong and the appropriate measures it will take.*

### **Work and Welfare benefits for under 27s abolished**

The question of how to deal with pregnancy, maternity and the consequences of motherhood (and single parenthood) has neither been addressed in the new legislation related to the Work and Social Assistance Act (WWB). Again, no GIA ex-ante has been carried out. The idea behind the government's intentions is that unemployed youth should be offered either a job or vocational training by local government. Such an offer cannot be refused – no social assistance benefit will be available anymore. The issue of how to deal with maternity, motherhood and single parenthood has been left to the local government, which has to implement this new legislation. No intentions of monitoring (and sex-segregated data-collection) have been made public.

*The NGOs suggest the Committee requests monitoring of the effects of the changes in the Work and Welfare Act, with data disaggregated by gender and ethnicity in compliance with CEDAW-obligations, in the 6<sup>th</sup> report.*

## **7. Gender equality in Foreign Policies**

### **New financial pledges and enhanced policy focus**

NGOs commend the Ministry of Foreign Affairs for having prioritised enhancement of its policy focus on equal rights and opportunities for women, and the right to sexual and reproductive health. Additional resources have been pledged for programmes to combat

<sup>56</sup> UWV Kwartaal Verkenning 2009-II, Juli 2009 p. 11, p. 36, p. 62. UWV Kwartaal Verkenning 2008-II Juli 2008 p. 3 and 55, UWV Kwartaal Verkenning 2008-III Oktober 2008 p. 46.

<sup>57</sup> UWV Kwartaal Verkenning 2008-IV, Januari 2009 p.48, UWV Kwartaal Verkenning 2008-III Oktober 2008 p.39-40

violence against women and in support of women's sexual and reproductive health. In addition, a new MDG3 Fund has been established for a period of three years with a total of 70 million euros for initiatives in support of women's economic, political and bodily rights and opportunities. Regrettably, so far no other bilateral donor agencies have joined to co-fund this much appreciated initiative of the Dutch government. NGOs are concerned about the sustainability and continuity of this Fund, in particular in the context of the current economic crisis and the anticipated reduction of the budget for development cooperation.

*The NGOs suggest the Committee asks the government to reveal its views and efforts with respect to the sustainability and continuity of the MDG3Fund. Is the government planning to raise this issue (formally or informally) during the 54<sup>th</sup> session of the CSW at which the conclusions of the 52<sup>nd</sup> CSW (Financing for gender equality and the empowerment of women), will be evaluated?*

### **Support channelled through Dutch development NGOs**

Many gender equality initiatives are, for one reason or another, not eligible for support from the MDG3 Fund. They rely mainly on development assistance channelled through Dutch development NGOs. Gender experts are concerned about the possible implications of the newly revised funding regulation for Dutch NGOs. The assessment format does not guarantee an assessment of the gender quality of the programme proposals. In addition, a substantial reduction of the budget for the NGO funding channel has been announced, starting in 2011.

*The NGOs are interested to know whether the government is willing to add an assessment of gender in the format of the newly-revised funding regulation for Dutch development NGOs.*

### **Gender mainstreaming and monitoring of mainstreaming performance**

NGOs commend the Ministry of Foreign Affairs for the different targeted interventions aimed at equal rights and opportunities for women and girls. However they lack adequate insight into the targets, strategies and resources for mainstreaming gender equality throughout all policy areas, sectors, programmes and budget lines. In this respect they are especially concerned as the latest OECD-DAC report on the Gender Equality Policy Marker highlights a sharp decline in the gender equality focus of Dutch bilateral sector allocable programmes during the period 2006 – 2007.<sup>58</sup> The Gender Equality Policy Marker is an instrument to highlight the degree of gender mainstreaming throughout bilateral sector programmes, which is a substantial part of the development cooperation aid budget.

*Could the government reassure the Committee and NGOs that the gender mainstreaming performance in sectors, programmes and budget lines has improved considerably since 2007?*

### **Benchmarks and resources required for National Action Plan 1325**

The Dutch government has been very active at the international level to promote the adoption of Security Council Resolution 1820 addressing sexual and gender-based violence against women and girls in conflict zones. The NGOs commend this. The government has committed itself to the implementation of Security Council Resolution 1325 on Women, Peace and Security, in recognition of the crucial role that women play in conflict prevention, conflict resolution and post-conflict reconstruction. A National Action Plan 1325 has been adopted. In the view of the NGOs, however, the description in the government's report (p. 28, p. 53/54 in CEDAW/C/NLD/5) is not accurate enough in the light of CEDAW's reporting guidelines. The actual implementation of this Action Plan and its monitoring still requires the adoption of benchmarks to enable measurement of results. Till now, insufficient human and financial resources have been made available for implementation and monitoring of the National Action Plan 1325. Moreover, an update of the National Action Plan, adding the implementation of SCR 1820 in tandem with 1325 seems desirable. The Assessment Framework to prepare peacekeeping missions does not yet incorporate gender perspectives and does not guarantee the protection of women's rights as laid down in UN Resolution 1325 and 1820.

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<sup>58</sup> OECD-DAC 2009

*The NGOs suggest the Committee addresses the issue of benchmarks, resources and incorporation of gender perspectives in the National Action Plan 1325 during constructive dialogue.*

**Final concern: how to maintain a gender-focus in the context of reduced budgets?**

Due to the economic crisis, the budget for development cooperation, as a percentage of the GNP, will be reduced considerably. It is possible that other factors will lead to an additional reduction.

*The NGOs are interested to know how the government will fulfil its promise to enhance the policy-focus on gender equality and women's empowerment through all the different aid channels at its disposal in the context of its reduced budget for development cooperation?*

## Article 3 Ensuring the full development and advancement of women

The NGOs appreciate the effort the government took to meet the Committee's request to provide information on article 3. The information is, however, not an analytical and result-oriented examination of how the measures contributed to or ensured the full development and advancement of women. It describes developments over the past years without an explanation or assessment of whether the government's measures had any effect, and a summary of intentions, proposals and projects that might pay off in the future (or not). Below, the NGOs comment some paragraphs. But first they want to raise a few issues they feel ought to have been included in the report.

### 1. No information about developments regarding women's income

The NGOs think that without proper income women cannot exercise and enjoy fully their human rights. It is, therefore, a serious shortcoming in the government report that no information is provided about developments in the income of women, disaggregated by ethnicity and age. Single ageing women, both before and after they reach retirement age (65+), are in a disadvantaged position, lacking perspectives to improve their situation.

*The NGOs urge that the Committee asks the government to include a comprehensive disaggregated overview of the income of women in its 6<sup>th</sup> report.*

#### Is economic independence of women really an important aim?

An income of one's own, to paraphrase Virginia Woolf, is a precondition to full self-determination of women. For many years, the government used an indicator to measure this economic independence: 70 per cent of the net statutory minimum wage for adults. That was the income a single pensioner received from the statutory old age pension (AOW). According to a broad consensus, however, the level of this state pension was not enough to ensure a decent life, let alone full development. An extra tax-credit for pensioners has therefore been introduced, raising the income for single pensioners to around 80% of the net minimum wage. In the view of the NGOs, it is time to adapt the indicator for economic independence accordingly, to 80% of the net statutory minimum wage, corresponding to the minimum wage income of a 4-day working week, which is often used as a ideal standard for people who combine employment with care (for children).

Government policies seem to lean in the opposite direction: dropping economic independence as an indicator at all. For years, it had been a target that in 2010 at least 60% of women between ages 15-65 would be economically independent, earning a wage- or entrepreneurial income of at least 70% of the net statutory minimum wage.<sup>59</sup> The current government did not expect to achieve the target and therefore wanted to postpone it to 2016 (see Emancipation Memorandum). Almost unanimously, the parliament thought the government had to step up its efforts instead, and reinstated the target to 2010. Recently, parliament requested information about the extra activities the government ought to have undertaken in this respect. The Minister for Emancipation responded that he had not even discussed the subject with his colleagues in the Ministry of Social Affairs. He added that he expected that proposed tax measures and the Part-time Plus Taskforce would pay off – apparently these are the two main instruments in the government's view (critical comments of the NGOs follow below). Moreover, he announced the commissioning of another in-depth research into economic independence.<sup>60</sup> The NGOs disappointedly concluded that the request from parliament did not lead to any policy-intensification.

*The NGOs suggest the Committee requests that the government reports on the number of women in different age groups and ethnicities earning (at least) an income of 70-80% of the net minimum wage from wages or entrepreneurial income as well as via social security benefits, (pre-)pension-schemes etc. These figures should be included in the research about*

<sup>59</sup> Meerjarenbeleidsplan Emancipatie (Multi year policy-plan on emancipation), 2000 p. 23

<sup>60</sup> *Parliamentary Papers II* 2008/09 30 420 nr. 133

*economic independence and in the 6<sup>th</sup> report as in addition to general information about developments in the individual income of women.*

## **2. Women, especially single mothers, overrepresented amongst working poor**

Women are overrepresented amongst the poor (55%). Two out of five single parent families, predominantly single mothers, belong to poor households. The number of working poor is steadily increasing and wage-earning women seem overrepresented. Some 11 percent of single working parents belong to the category of working poor.<sup>61</sup> As the answer to Q 23 shows, government policies are mainly aimed at reducing the number of poor people with a benefit (reducing the government's expenditure), without providing perspectives for poor people to achieve stable improvement in their income.

Hardly any insight exists into the length of the period working people live in poverty, but it is not unlikely that the perspective of escaping poverty, especially for single mothers and elderly (50+) women, is rather poor. The underutilisation of national and local (additional) allowances seems quite substantial. Moreover, most working poor, and especially the single parents among them, earn too little to be able to make full use of all the tax-credits available.

*The NGOs think the government should develop gender-sensitive policies in improving perspectives of the working poor F/M and suggest the Committee addresses this issue in constructive dialogue.*

### **Involuntary part-time and precarious work**

The 5<sup>th</sup> government report suggests that all part-time working women choose a comparatively small part-time job because they want to combine employment and care, needing to acquire “a more positive self-image to work more hours” (p. 32/ 63 in CEDAW/C/NLD/5). No attention is being paid to developments in the labour market in this respect. In a growing number of sectors, where many women work, it is hardly possible to find a full time job (home care, health care, retail, hotel and catering industry, mail). Middle aged (40+) and elderly women probably face this problem to a greater degree. In the home care and health care sector, an important additional factor is that the work is physically as well as mentally heavy. Twenty per cent of all part-timers want to work more hours.<sup>62</sup>

The trend of diminishing fulltime possibilities is partly overlapping with the growth of precarious work (temporary work and flexible contracts). In 2008, 20% of women workers fell into this category (men 16%).<sup>63</sup> Of the men, the overwhelming majority are in the age category 15-24 – the same applies to the male part-timers – but amongst women other age groups also belong to the category of ‘flex-workers’. The growth of the active labour force between 2005 and 2007 (7%) can be mainly attributed to women. The growth of permanent contracts was only 5%, compared to 32% of flexible contracts.<sup>64</sup> Both women and men of migrant origin are also overrepresented.

Ill-health is another reason for workers, both male and female, to work part-time. The majority of the disabled who received state benefits (WAO) but had been re-assessed according to stricter criteria (see the previous paragraph Art 1&2.6) and returned to employment worked in a part-time job, not even fully utilising their theoretical income earning capacity.<sup>65</sup>

*The Dutch government is keen on promoting the Decent Work Agenda of the ILO in other countries, but, in the view of the NGOs, it should prioritise this Agenda in the Netherlands itself as well– this might be an interesting subject for the Committee.*

### **Even more poverty for single parents when child turns 18**

Single parents with social assistance (almost exclusively women) face even more poverty when the youngest child turns 18. A child younger than 18 is allowed to earn a certain income that is not taken into account when social assistance grants are determined. On the 18<sup>th</sup>

61 Armoedemonitor 2007 p. 32, 46, 86

62 CBS 2009( a). Part-timers working less than 12 hours are not included in the figures.

63 NEA 2008, p. 4

64 FNV 2009

65 Van der Burg & Maurits 2009, p. 23, P. 47. Unfortunately there is no information about the part-time rate before the invalidity.

birthday, this situation changes in two ways: the social assistance due to the parent is lowered and the income of the child is taken into account. Local authorities can decide to supply additional social assistance if the child is still at school but are not obliged to do so – consequently the situation differs from one municipality to another. Some continue to issue the single parent with the higher benefit up to the 21st birthday, but others do not. Single parent families living in these municipalities obviously experience severe financial difficulties, sometimes leading to school dropout.

Since 2003, NGOs have called for change in legislation in vain. Two years later, research showed that 20% of the municipalities did not provide any supplemental income. The government refused to interfere, even after the Central Appeals Court ruled in April 2007 that every municipality ought to do so. After another NGO-lobby parliament in September 2008 finally requested the government to change the Work and Benefits Act (WWB) to oblige local authorities to supplement incomes until the child had finished education. It took the government another year before preparing a bill to make a supplement allowance obligatory up to the age of 21 regardless of whether the education was finished or not.<sup>66</sup>

*The NGOs take the view that the government's slack approach, disadvantaging single mothers in social assistance and their (18+) children, is in contradiction with article 3 and article 5b of the Convention. The Committee could consider asking the government for an explanation.*

### **3. Can the Part-timePlus Taskforce reinforce women's legal position?**

The 5<sup>th</sup> report described the background of the Part-timePlus Taskforce (p. 32-33/p. 62-63 in CEDAW/C/NLD/5). The NGOs appreciate the work of the Taskforce, but wonder how it can help women who want to extend their working hours. Is it contributing to the reinforcement of the (legal) position of women in extending their working hours? It could play a role in promoting the rather weak legal possibilities employees have to support their wish of extending their job. Most employers and employees are not aware of the existence of the possibility. Till now the government has not done very much to change this ignorance. The legal possibility is hardly invoked in court cases, especially not for extending working hours – and if so, by men. A first step in improving the legal position could be to strengthen the legal instrument: upgrading the right to apply for extension of the number of working hours to the same level as the right to apply for part-time work. A further step could be to reduce the period an employee has to wait before being able to apply once more from two years to one year or even shorter.

*The NGOs think that the government is putting too much emphasis on cultural issues and on the assumption that women ought to acquire 'a more positive self-image' and pays too little attention to developments in the labour market itself (see paragraph 1). Knowing that the Committee has expressed its interest in involuntary part-time work by women in previous constructive dialogues with the government, the NGOs would encourage the continuation of the dialogue in this respect: is the government using the best instruments to ensure the full development and advancement of women? If the objectives of the Taskforce are not accomplished at the end of the two year term (as is likely), what follow-up is the government envisaging?*

### **4. Effect of tax measures overestimated**

The government report assumes that a major hindrance to the increase of female labour market participation is to be found in the so-called marginal tax and premium burden, without giving any valid proof for this assumption. Experts from NGOs point at an international consensus in academia that the influence of tax-incentives on the behaviour of tax-payers and their families is often overestimated, if it exists at all. Neither the 5<sup>th</sup> report nor the underlying fiscal/financial policy papers analyse the effects of changes in Dutch taxation over the last 20-30 years on female labour market participation. If this kind of analysis had been undertaken it could have been established that the biggest increase in female labour market participation had taken place under a much higher marginal tax burden than is now in place.

<sup>66</sup> Parliamentary Papers II 2008/09 30 545 nr. 60, 71, 74

In fact, recent changes in the tax-regime seem to have escaped the attention of the authors of the report, because the transferability of the tax-credit/tax-deduction has been abolished since 2001. Maybe this could be attributed to the fact that, even for policymakers and politicians, the tax-system has become too complicated, let alone for ordinary citizens – one of the reasons for a rather small effect on the behaviour of people. The introduction of several income-related allowances (housing, childcare, healthcare) with the possibility to receive advance payments thereof increased the unclarity.

*The NGOs would like to pose the question: are tax measures the best instruments to ensure the full development and advancement of women?*

#### **Additional proof for the overestimation of ‘poverty-trap’**

‘Poverty-trap’ is often used as a concept to point at similar hindrances for benefit-dependent people to re-enter the labour market – because of taxation and income-related allowances it is assumed that people refrain from looking for and accepting jobs. In the answer to Q 23, the government again repeated this mantra. But interestingly, there is hardly any evidence to prove these assumptions. Recent research did not find any differences in behaviour regarding looking for jobs between people who received income-related allowances and those who did not.<sup>67</sup> This is another reason not to overestimate tax measures.

#### **Abolishment of independent allowance/tax credit: an improvement?**

Several NGOs, political parties and trade unions welcomed the introduction of an individual, non-transferable tax-credit in 2001 as a first step towards a principled approach of economic independence, especially for married or cohabitating women. Further steps, like increasing the level of the allowance, an individual entitlement to re-integration services and related preconditions such as active availability for labour market participation unless valid reasons hampering this were present, have not been set – probably due to change of government in 2002.

The 5<sup>th</sup> government report presents the gradual abolishment of this individual allowance (wrongly presented as transferable) as a measure that will promote the position of women (p. 32/ 58 and 62 in CEDAW/C/NLD/5). How women’s position will improve remains unclear. It fails, moreover, in explaining how it will affect women who cannot find a job or are hampered by health in doing so. The subject of income-effects on families where women remain unemployed or ill seems not to have been taken into consideration at all.

Whether the breadwinner model is in all cases freely chosen by both partners remains to be seen. Just over 20% of the non-participating women stated in 2007 that care-responsibilities were the main reasons for not wanting to participate in the labour force, while 25% blamed illness and disability, and another 25% education/training.<sup>68</sup>

*The NGOs would suggest that the Committee asks the government for clarification: how will the gradual abolishment of the individual tax credit allowance improve the position of women who remain unemployed or ill.*

### **5. Unsatisfactory answer to request about women living in poverty**

According to the NGOs it is confusing and not very relevant in such a short piece of information to use several definitions of poverty as in the answer to the request for information about women living in poverty (Q 23). Certainly when no proper explanation of the definitions is provided it leads to a suspicion that reducing the problem of women in poverty was the motive. To stick to figures from 2007, before the economic crisis, fuels this suspicion, because more recent figures are available and they reveal a reverse trend: an increase in the number of women with a social assistance benefit. The publication to which the government refers hardly contains disaggregated data (sex, age, ethnicity) – for which the government, as principal, is to blame. No information is provided about the dynamics: how many families and single women and men live in poverty for years (and which ethnicity they belong to).

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<sup>67</sup> Armoedemonitor 2007 p. 15 and p. 94-108

<sup>68</sup> Emancipatiemonitor 2008 p. 103

One has to read the answer very closely to notice that the government is now using two different standards of poverty: one for people under 65 and the other for pensioners. The last category receives an extra allowance via the tax-system. Implicitly, therefore, the government acknowledges that the minimum-income for people under 65 is too low to live a decent life. Disaggregated figures about the number of families and individuals living just above the poverty-line (for instance up to 10 percent above) could provide very interesting additional information – probably an overrepresentation of women as well.

*The NGOs would like to know how the government assesses the poverty-consequences of measures, including those already embedded in legislation – like the abolition of the statutory survivors benefit (ANW) for survivors (born > 1949) without children under 18 – and the abolition of the spouse benefit in the statutory state pension (AOW) in 2015. The development of the number of men and women without a full statutory state pension is relevant as well. The NGOs suggest that the Committee requests more specific information about developments regarding income, and more specifically about poverty, in the 6<sup>th</sup> report.*

## 6. No measures to address higher female unemployment

Another important subject lacking in the 5<sup>th</sup> government report is unemployment. More women than men are among the unemployed: in 2007, some 190.000 women and 153.000 men. This applies in all age categories.<sup>69</sup> Due to the economic crisis, unemployment figures are gradually rising, mainly in sectors that are conjuncture-sensitive – predominantly male-dominated. The Employee Insurance Schemes implementing body UWV expects, however, that the unemployment among women will remain higher than among men.<sup>70</sup>

The same applies to the less educated, the elderly and immigrants. Unemployment figures among women from migrant origin are two-and-a-half times higher than among those of Dutch origin. Unemployment among Surinamese-origin women and those originally from the Dutch Antilles is particularly high, whereas their net labour market participation is generally higher than among women of Dutch origin. The NGOs point to the fact that some of the causes frequently mentioned as a reason for higher unemployment among people from migrant origin (insufficient command of Dutch language, low education), are not applicable to these categories. Reintegration services should target those categories of women to a greater degree.

When the economic crisis began, the government and social partners immediately started to develop temporary measures to prevent unemployment (of mainly male workers) and prevent the loss of qualified manpower for enterprises. A so-called part-time unemployment benefit has been introduced for employees in companies that have to temporarily reduce production. Those workers keep their employment relationship, combine a part-time wage with a benefit, and often engage in vocational training.

*The NGOs do not criticise the temporary measures to prevent unemployment in the present economic crisis in itself (though they are very costly) but point at a sharp contrast with the absence of any additional efforts to address female unemployment.<sup>71</sup> The NGOs suggest that the Committee discusses prioritisation of combating female unemployment with the government.*

69 Emancipatiemonitor 2008 p. 100-101.

	M	F
12-24 years	8.0	10.2
25-34	3.0	4.4
35-44	2.0	5.4
45-54	3.0	5.2
55-64	5.0	5.7
total	3.6	5.8

In Dutch statistics, people working less than 12 hours per week do not belong to the Active Labour Force. Unemployed have to be available for work within a month; those working less than 12 hours but looking for a bigger job are included under the unemployed. People with and without benefit are counted under the unemployed.

70 UWV *Kwartaal Verkenning* 2009 II p. 11

71 See for other reintegration measures for instance the letters of the (deputy) Minister of Social Affairs to parliament of 25-03-09 and 12-06-09

### **Re-integration policies hardly benefit women**

It would be interesting to have information about the length women's periods of unemployment. In 2007, some 40.000 women re-entered the labour market, while 133.000 wanted to do so (more than two thirds of these live in a family with a partner and under-age children).<sup>72</sup> Most of those women are not registered as unemployed. Though officially women wanting to re-enter the labour market ought to be entitled to re-integration instruments like job-coaching and vocational training, in practice these instruments are hardly accessible for people without a state unemployment allowance. Most of the € 2 billion that is spent yearly in the reintegration market is spent on reintegration of people with a benefit (unemployment, invalidity, social assistance). The decentralisation of the re-integration policy has aggravated this situation. The new government acknowledges the problem – that is the reason for signing the Administrative Agreement to which the 5<sup>th</sup> report refers (p. 35/p. 68 in CEDAW/C/NLD/5). Given the number of women re-entering the labour market or wanting to, the target of 25.000 in this government term seems unambitious, to put it mildly. The recent rise in the target to 35.000 is welcome, but in the view of the NGOs not enough.<sup>73</sup>

Another consequence of the decentralisation is not mentioned in the 5<sup>th</sup> report. That is the fact that it is very difficult to get an overview of the number of beneficiaries and other jobseekers (M/F) that successfully reintegrate and/or participate in vocational training - let alone of the dynamics of the process. NGOs receive signals that there is a growing number of people, especially single parents and other single women, who have to alternate temporary work or other flex-work with applying for a Work and Social Assistance Benefit. Without a proper monitoring system (and data disaggregated by gender and ethnicity) it is very hard to assess problematic developments. The fact that all subsidies for autonomous organisations of women with a benefit have been abolished, at national level and local level, further complicates this.

*The NGOs conclude from the unemployment figures as well as the reduced opportunities for women with an unemployment benefit to become re-employed that the reintegration market does not cater enough for women. It is regrettable that most of the specialised knowledge of women's vocational training ('vrouwenavscholing'), successfully targeted at lower-educated women of both Dutch and non-Dutch origin, was lost in the decentralisation process. In abolishing the subsidy for this, the previous Minister for Emancipation is to blame. The NGOs suggest the CEDAW Committee asks the government how it intends to improve the reintegration market for women. Could it be an idea to include a quota provision guaranteeing unemployed women places according to their percentage among the unemployed population, as was very successful in Germany?*<sup>74</sup>

### **7. Mixed feelings about policies regarding women of migrant origin**

The government reports under art. 3 about several projects with regard to women from ethnic minorities (p. 41-44 / 78-84 in CEDAW/C/NLD/5). One point of criticism by the NGOs is the absence of result-oriented reporting. Overall, the NGOs have mixed feelings about the projects and the policy analysis behind them. They favour a close watch for multiple discrimination and therefore urge the government to incorporate in its policies an exploration of the implications of the intersection of various forms of discrimination.<sup>75</sup> That is also the reason that they repeatedly plead for data disaggregated by sex and ethnicity and other relevant indicators. Differences or discrepancies between (wo)men from Dutch origin and (wo)men from migrant origin, however, do not necessarily have to be 'explained' by pointing at the ethnic factor (let alone at Islam, as some political parties and journalists do). Often another factor is decisive, like socio-economic status. Where necessary, further differentiation needs to be made between ethnicities and within ethnicities, otherwise no successful policy development can be achieved. Moreover, without further differentiation there is a huge risk of reinforcing stereotypes.

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72 Emancipatiemonitor 2008 p. 117

73 *Parliamentary Papers II* 2008/09 30 420 nr. 137 p.5

74 Hanna Beata Schöpp-Schilling, *Impediments to Progress: the Formal Labor Market*, in Schöpp-Schilling & Flinterman 2007 p. 160

75 See also NJCM & Netwerk VN-Vrouwenverdrag 2006

The answer to Q 21 is an example: the government describes the increasing labour participation of women from ethnic minorities and especially of Turkish and Moroccan women (both measured in persons) and immediately 'jumps' to ethnic minority women who supposedly do not participate in society. Organisations of women of migrant origin report that volunteer work in their own communities is not recognised as "being involved in society". Ill health (of migrant women themselves or their relatives) is another factor that is not taken into account. A major criticism from the NGOs to the 1001 Strengths Programme has always been that it did not focus enough on paid employment for the target groups. In their view the government is rather late with acknowledging this.

In its presentation, the government disguises the fact that migrant women work more often in full-time jobs compared to women of Dutch origin. Moreover, by only presenting figures about net labour participation, the huge (registered) unemployment of Turkish and Moroccan women remains invisible, including among highly educated women, not only reinforcing stereotypes but also leaving possibilities for policy interventions unused. Another example is that in the previous paragraphs of the chapter on Art. 3 in the government report on women in top positions or female entrepreneurs, no effort is made to pay attention to women of migrant origin, thus reinforcing the stereotype that migrant women are not included in these policies and projects.

*Knowing that the Committee is keen on the situation of women of migrant origin, the NGOs suggest addressing the ambiguity of the government's policies in this respect (e.g. reinforcing stereotypes but also leaving possibilities for policy interventions unused) in constructive dialogue.*

#### **Recognition of Acquired Competences for refugee women?**

Another example is the use of the instrument of EVC – Recognition of (previously) Acquired Competencies. In the paragraphs about migrant women in the report and the answer to Q 21, this instrument is only mentioned in the context of volunteer work (the 1001 Strength programme). That is also the case in the paragraphs about lifelong learning.

*The NGOs think that adaptation of the instrument of Recognition of Acquired Competencies (EVC) to the situation of refugee women, almost always highly educated, can enhance their chances on the labour market. They suggest that the Committee asks the government its views on this, at the same time requiring disaggregated data about the outcome of the Job Offensive for Refugees (p. 42 / p. 81 in CEDAW/C/NLD/5).*

#### **8. Diminished social protection of domestic workers and homecare workers**

The NGOs remain concerned about the government's description of the position of domestic workers (p.33/34 and p.64 in CEDAW/C/NLD/5).<sup>76</sup> Unfortunately, its answer to Q 15 including a description of 'the Services at home scheme' is far from accurate.<sup>77</sup>

The government disguises the fact that both domestic workers working for one private employer (for a maximum of three days) and domestic workers working for several private employers (each for a maximum of three days – in combination a rather full working week) face diminished social protection. In all these cases they have no access to social security (unemployment, invalidity) unless they pay extra for a voluntary insurance while all other workers (part-time and full-time) do not have to pay for social security.

The government fails to justify why the extension of the category of domestic workers exempted from social security (from two to three days) was necessary to achieve the aims described – e.g. more jobs for the less qualified and more hours available for the employment market for the purchasers of personal services. The government cannot even assess whether the measure will contribute to achieving its aims since it admits not to keep any registration of

<sup>76</sup> NGOs Notes for Pre-session working group 2009 p. 3-4

<sup>77</sup> The government omits the income-related premium (4.8 per cent of the income) for health insurance paid to the tax-office, for which all other workers receive full compensation from their employer (prescribed by law). This is not the same as the income-related health insurance allowance for single persons and families with a joint income per year less than a certain amount, to which the government is referring.

both categories.

The government does not mention that the Council of State advised withdrawal of the 'Services at home scheme' from the bill in which it was included, nor that it was introduced as an alternative to proposals from two official advisory councils to improve the market for personal services.<sup>78</sup> In the opinion of the NGOs, those proposals, which had broad social support, would have improved the position of domestic workers.

By answering that the scheme applies to men and women, the government seems to negate that the Convention is not only about *de jure* equality but also about *de facto* equality of women. It worries the NGOs that the government seems unwilling to acknowledge this key principle of the Convention. Furthermore, the government is not willing to admit that no assessment has been carried out of the conformity of the 'Services at home scheme' with the Convention, nor with other international legislation like ILO C. 175 (part-time work). There are several sources indicating that women form the overwhelming majority of domestic workers and homecare workers falling under the scheme.<sup>79</sup> The number of homecare workers in FTE's has doubled in 2007, while the number of 'normal' workers in the sector has been reduced accordingly.<sup>80</sup>

*In the opinion of NGOs the exceptions Dutch social law makes for domestic workers are not in accordance with the CEDAW. The NGOs would be interested to learn the opinion of the Committee as to whether the 'Services at home Scheme' constitutes a violation of the Convention (Art. 1, 2 and 11).*

#### **9. Childminders next category of workers with disguised employment relation?**

The new rules for home-based childcare, to be introduced in 2010, seem to blur the employment relation of another category of predominantly female workers, childminders. It is unclear whether childminders are considered entrepreneurs or employees, and in the latter case who the employer is. The intermediary bureau will be responsible for wage-payments to home-based childminders. But is the bureau also responsible for labour conditions including the health and safety of the childminder? Do the childminders enjoy full social rights? If home-based childminders are considered to be entrepreneurs, do they enjoy all the (dis-)advantages of entrepreneurship?

*The NGOs consider it worrying that another category of predominantly women workers, childminders, has to work under a disguised employment relationship and would like to know how the government assesses compliance with the Convention.*

#### **10. More women in top positions?**

The government states in its report that to increase the proportion of women in higher functions in academic institutes, it needs 'to continue on the successful road we have started.' (p.39/p.74 in CEDAW/C/NLD/5). NGOs think that the government could have been more successful. The Netherlands did formulate a lower target of 15 percent of female professors by 2010, instead of the EU-norm of 25 percent. Only recently, through the Charter Talent to the Top, several universities set a goal that one of every four professors should be female. In the government's report (as well as in the answer to Q 17) only gender activities and instruments are announced, but no indicators of success are formulated. Recent research shows that the envisaged measures can hardly compete with invisible appointment practices of professors, advantaging men.<sup>81</sup> For example, 77% of all professors get appointed through closed networks and thus have been personally asked to apply for the job. The definition of 'scientific quality' contains values that put women in an unfavourable position. Official policies to increase the number of female professors are, moreover, often not consistently implemented or interpreted differently. If goals are not met, there are no consequences. NGOs suggest that the government should use these scientific insights to readjust its

<sup>78</sup> Sociaal Economische Raad 2006 (Social Economic Council) and Raad voor Werk en Inkomen 2006 (a en b) (Board for Work and Income).

<sup>79</sup> At the Ministry of Health, Welfare and Sports, the Ministry of Finances, the Central Bureau of Statistics, employers' organizations in the home care sector. An overview: Bijleveld & Cremers 2009.

<sup>80</sup> CBS 2009 (d)

<sup>81</sup> Van den Brink, 2009.

measures and be more precise about its aims and terms. These insights into academic practice could be useful to other settings as well, especially since other research points in the same direction.<sup>82</sup>

*NGOs think that the government might reconsider its standpoint about using quotas and other measures to increase the proportion of women in higher positions in (academic) institutions (further in the chapters art. 4 and art. 7 & 8).*

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<sup>82</sup> Sent 2009

## **Article 4 Temporary special measures accelerating de facto equality & Article 11 Eliminating discrimination in employment**

The NGOs were surprised to read that the “*government is taking temporary measures to promote the equality of men and women in the employment market*” (p. 45/p. 85 in CEDAW/C/NLD/5). Which temporary measures the government is referring to remains unclear in the report. The NGO’s will comment on the content of the report below, but start with the temporary special measures the government is not prepared to take.

### **1. Refusal to discuss temporary special measures in European Union**

Usually, when the slow progress in achieving de facto equality between men and women and the possibility of temporary special measures is brought up, the government refers to an assumed prohibition of the use temporary special measures in the European Union. Since other EU-member states and even the European Commission itself do use temporary special measures, including quotas, the NGOs think that the government could find a way out if it wanted to do so. In the recent report of the European Commission, the Netherlands is, not surprisingly, not mentioned among the member states that have measures put in place to achieve a better gender balance in leadership positions.<sup>83</sup>

#### **The use of quota by the European Commission**

The NGOs appreciate that (for the first time in history) the Dutch EU Commissioner is a woman – Mrs Kroes is Commissioner for Competition, quite an important commissionership. Mrs Kroes is very frank and positive about the fact that, apart from her impressive CV, she was nominated and appointed to this position in 2004 thanks to the use of a quota by the president of the European Commission.

*The NGOs would like an answer to the intriguing question: why is the Dutch government prepared to make use of a quota imposed by another (supra national) organisation and not prepared to use quotas for achieving better results with respect to equal participation and representation of women in the Netherlands itself? As the CEDAW-Committee engages in constructive dialogue with other State parties about the use of temporary special measures, the NGOs hope it will use these experiences, including with quotas, in its discussion with the Dutch government.*

#### **Temporary special measures allowed but hardly used**

In its answer to Q 17, the government states that under Dutch law temporary special measures are allowed but not obligatory. In fact it is referring to affirmative action, which is hardly used in the Netherlands for at least a decade. The government does not say whether it is actually not promoting the use of affirmative action at all. It could have set an example, for instance with appointments to supervisory bodies in the financial institutions it supported due to the credit crunch, but did not do so. Nor did the government use this opportunity to address the very poor representation of women in decision-making positions in the financial institutions under supervision.

*The NGOs suggest that the Committee asks the government why it does not use the unique opportunity to implement art. 2 f and 4.1 of the convention in the financial institutions it had to support due to the credit crunch.*

#### **No support for the use of temporary measures including quotas yet?**

The government also points often at a lack of support for the use of such measures amongst social partners and other relevant constituencies. A recent Advice of the Social and Economic Council about diversity in the workforce seemingly underlines this point of view: the majority was against preparing legislation to be implemented in case targets for participation of women at the top are not met in the near future – the Norwegian/Spanish model.<sup>84</sup>

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<sup>83</sup> European Commission 2009, p. 9

<sup>84</sup> Sociaal Economische Raad 2009, p. 77. The Netherlands Trade Union Confederation FNV was the only social partner in favour; employers and other trade union confederations voted against, as did the majority of independent (crown-appointed) members – two abstained.

The NGOs think that, on the one hand, more support exists in civil society and could be organised than the government expects. They also point at General Recommendation 25, para 29, stating that State parties cannot justify any failure to adopt temporary special measures by “*averring powerlessness, or by explaining inaction through predominant market or political forces (...)*”. Moreover, in other fields the government is not afraid to be a frontrunner. The present practice of de facto use of quotas for men is not in line with the Convention. See also the chapters about Article 3, Article 5 and Article 7&8 of this shadow report.

*The NGOs suggest that the Committee asks the government’s view about General Recommendation 25.*

## **2. No maternity benefit for entrepreneurs 2004-2008**

The government states in its answer to Q 19 that the exclusive intention of the maternity benefit is to enable the women concerned to stop or temporarily reduce their working activities in view of their maternity. The NGOs do not agree with that: the reinstatement of maternity benefits was in their view necessary to comply with the Convention. The withdrawal of the previous maternity benefit was only an accidental by-product of the withdrawal of the public disability insurance for entrepreneurs. It was not necessary to achieve the aims of that measure in itself, nor particularly relevant for the financial status of the funds from which the benefit is paid. In the third place: it is a matter of justice. The NGOs cannot explain why entrepreneurs who became pregnant between August 2004 and October 2007 could not receive benefits while women in the same situation before and after those dates do. With compensation for the missed maternity pay, female entrepreneurs could pay off debts they had to make to be able to have some maternity leave and/or to spend time with their children as a form of paid parental leave – it’s not their fault that they happened to be pregnant at the wrong time!

In the meantime, the Court of Appeal has ruled that article 11 paragraph 2 sub b of the Convention has no direct effect on the Dutch domestic legal order.<sup>85</sup> According to the Court, “maternity leave” is not sufficiently defined in the Convention, because neither the duration of the leave nor the level of the maternity benefit is defined. Therefore the State has, in the view of the Court of Appeal, the discretionary power not to take any measures at all (for entrepreneurs). The Court of Appeal made no reference to either documents of the CEDAW-Committee. This is very disappointing in the view of the NGOs, who still hope for an appeal to the Supreme Court. The Committee stated clearly in Communication No. 3/2004 (10.4) that this article obliges State Parties to introduce maternity leave with pay. The Committee restricted the margin of discretion to the level of the benefit (that was the crux of the dispute in that special case).

*The NGOs urge the Committee to address the obligation to comply with the convention with respect to the entrepreneurs who lost maternity benefits between 2005 and June 2008. They also suggest that the Committee asks the government to introduce an obligation for the judiciary to explicitly justify itself when the view of the Committee is being disregarded.*

## **3. Will the extension of parental leave and payment via tax-credit work?**

The extension of the right to (unpaid) parental leave from 13 to 26 times the (average) working week is certainly a step forward. The effect should not be overestimated, because only 25 per cent of the parents with an entitlement to parental leave made use of their right in 2008 – 18 per cent of the men and 37 per cent of the women.

Not surprisingly (partly) paid parental leave is more popular than unpaid leave: 10 percentage-point of the 18 per cent of fathers enjoyed (partly) paid parental leave (21 percentage-point of the 37 per cent of the mothers).<sup>86</sup> The NGOs therefore appreciate that the government was willing to introduce a form of partly-paid parental leave in 2009, paying up to

<sup>85</sup> Hof Den Haag 21-07-2009, zaaknr. 105.007.459/01 (not published at <http://www.rechtspraak.nl>)

<sup>86</sup> CBS 2009 (c). In previous years more women used their right to parental leave. The reason for the decrease could be the introduction of the parental leave tax credit in the year 2009.

half the statutory hourly minimum wage per hour leave. They question, however, whether the form of payment via a tax-credit makes this parental leave accessible for all working parents of young children. To qualify for a tax-credit one has to pay enough tax to earn a credit. Low-income earners often cannot use all the tax-credits they could claim in theory – most single parents are in this situation. Another problem is that this financial compensation for the parental leave is only available (long) after the leave itself, meaning that parents have to pre-finance their parental leave and it is questionable whether many can afford that.

*The NGOs suggest that the Committee asks the government why it has chosen such a complicated tax-credit system for the partly paid parental leave and why not the allowance-system, which seems to work quite well in the case of childcare. Another question could be why the government is not opening up the partly paid parental leave to entrepreneurs as well, for instance for one day (8 hours) per week.*

#### **Monitoring of collective agreements regarding paid parental leave?**

Until recently, the government thought the financing of parental leave was the sole responsibility of social partners and individual employees. Only a few collective agreements, however, provided for partly paid parental leave. For years, NGOs and trade unions advocated the model of a minimum parental leave allowance provided by the government, and additional payments by the employer or social funds. Now the government has taken a first step, it might become less difficult to negotiate these additional payments.

*The NGOs would like to know whether the government held discussions with social partners about the best format of the state minimum entitlement to stimulate additional payments for parental leave by the employer or social funds. Since it was not included in the half yearly monitoring report about main trends in collective agreements<sup>87</sup> the NGOs are afraid that the government is not discussing nor monitoring the subject with the social partners as frequently as they do mainstream issues such as wages. They suggest that the Committee inquires whether the government is encouraging and monitoring collective bargaining agreements on this issue. If so, how?*

#### **4. Progress with regard to childcare but demand requires more**

The introduction of the Childcare Provisions Act in 2005, after years of delay, and the subsequent increases in child-care allowance were major steps forward. The NGOs commend the government, too, for making employers contributions compulsory. As all employers now have to contribute, a barrier for the employment of women of childbearing age has been removed – before 2007 the employer contributed mainly to the childcare of its own employees. Employers are supposed to pay jointly for one third of the costs. Since the employer's contribution is part of the employer's premium for unemployment insurance, most probably it will soon be forgotten that there is an employer's contribution for childcare at all. This could have reverse effects. It seems that the share of costs for childcare paid by employers is gradually dropping.

More parents than expected applied for the childcare-allowance, exceeding the government's original budget. Consequently the government is tightening the rules and reducing the allowances, especially for home-based childcare. Some new measures with respect to home-based childcare and day nurseries are aimed to improve the quality of childcare and the monitoring and enforcement thereof. The NGOs consider that a step forward – parents' organisations have advocated this for years. Other measures, however, include reducing the maximum hourly rate for home-based care. The NGOs fear that this can affect the availability of home-based care, which, especially in rural areas, is the only possibility for childcare. This progress does not mean that all the problems with respect to childcare have been solved as yet. The NGOs point at the remaining shortages and waiting lists, especially for after-school care. Demand is growing faster than supply.

*The NGOs suggest that the Committee asks the government how it proposes to meet the growing demand for affordable childcare.*

<sup>87</sup> Annex to *Parliamentary Papers II* 2008/09 29 544 nr. 199 (letter of Minister of Social Affairs and Employment dated 2 July 2009)

### **Childcare during lunch-break is not part of the Childcare Provisions Act**

The NGOs feel that the 5<sup>th</sup> report is not accurate in describing school-related childcare as “after-school childcare” (p. 50/95 in CEDAW/C/NLD/5). It is not the same as the after-school care described in the next paragraph and in table 2. Offering childcare for the children who stay at school during lunch-break has been the responsibility of the elementary schools for years, but the schools never received any additional means for that – apart from the (very limited) arrangement for combination jobs. Quality standards have not been set. Some schools are asking parents to help on a voluntary basis, which is not exactly a solution for working parents. Other schools organise it with professionals, but let the parents pay the price, which is obviously a problem for single mothers and other low-income parents. The best solution would have been to include lunch-break childcare on equal footing as after-school childcare for children in primary schools in the Childcare Provisions Act.

*The NGOs have never understood why the government refuses to include lunch-break childcare in the Childcare Provisions Act, as it is a major obstacle for women’s labour market participation. They suggest the Committee asks for an explanation.*

### **5. Gender-bias in approach of labour migration**

The 5<sup>th</sup> government report does not provide any information about female labour migrants, documented or undocumented. Research indicates that in normal labour migration to the Netherlands, there are specific gender differences: women often migrate for lower skilled labour; they earn less and are more excluded from rights than men.<sup>88</sup> Moreover, precisely in some sectors where predominantly women are employed - domestic work, prostitution and sex-related entertainment – there is no access to work permits and consequently to social security. As a result, migrant women working in these sectors are especially vulnerable to exploitation and abuse. Though under Dutch law, labour legislation ought to be applicable to undocumented workers, they can hardly claim their rights. Private employers of domestic workers are often not aware of their responsibilities according to the labour legislation, even though some might be prepared to do so, had they known. The government is not making the relevant information easily available.

The NGOs are of the opinion that women should be able to obtain work- permits for work as domestic workers, and in prostitution and sex-related entertainment. This follows from Art. 2 (a and f) and 11 from the Convention, as the CEDAW-Committee has recently confirmed in General Recommendation 26. There is an increasing demand for domestic workers as can be concluded from the great number of vacancies in home care as well.

*The NGOs suggest that the Committee asks the Dutch government to address the gender-bias in labour migration policy and to report how General Recommendation 26 will be implemented. The Committee could also enquire whether the government is considering a Gender Impact Assessment regarding the Blueprint on new immigration policies.*

### **6. No guarantee to return to former job after maternity leave**

Art. 11 2. B is very clear about the obligation State Parties have to take all appropriate measures to make sure women do not lose their former employment or seniority during maternity leave. In the view of the NGOs, the right to return to the former job (or an equivalent position) is not explicitly guaranteed in Dutch law. The government did not consider this necessary, because it should be considered discrimination, which is prohibited.<sup>89</sup> That might be true, but by explicitly including the right to return to the former job or an equivalent position in the law the government could set a clear norm.

Another form of discrimination in relation to maternity is the employers’ practice of not extending temporary employment contracts after being informed about pregnancy. The jurisprudence is very clear: the employer has to prove that failure to extend the contract has nothing to do with the pregnancy. So women can take legal steps against this discrimination, but the energy that requires of women while they are pregnant or caring for a newborn often

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88 De Lange, 2007.

89 Art. 2.7 of Directive 2002/73/EC and art. 15 of Directive 2006/54/EC prescribe the same. The government argued this in the bill implementing Directive 2002/73/EC. *Parliamentary Papers II 2004/05 30 237 nr. 3 p.5-6*

demotivates them.

*In the view of the NGOs the government should do more to guarantee the return of women after maternity to their former job. NGOs wonder why the government's information for employers with respect to pregnancy does not contain the fact that not extending the temporary contract because of the pregnancy is discrimination, nor is the shift of the burden of proof. The Committee could consider asking why.*

#### **7. 'Discrimination monitor of non-Western ethnic minorities'**

The NGOs welcome the fact that the "Discrimination monitor of non-Western ethnic minorities in the employment market 2007", commissioned by the Ministry of Social Affairs and Employment, does supply disaggregated data (sex and ethnicity). Previous publications on this subject did not do that in a systematic way.<sup>90</sup> The government describes the main outcome (p. 47/48 p. 90-92 in CEDAW/C/CLD/5) and has announced follow-up research. Results of this research and possible solutions were discussed with social partners in November 2007. Since the government does not provide any information about the outcome of the conference, the NGOs fear it is limited to the formulation of soft intentions, without agreement on the need for hard results to achieve progress.

In the view of the NGOs, research like the Discrimination monitor is very important to map discrimination. It is known that only around 5 per cent of those people who feel discriminated against approach an anti-discrimination bureau.

*Most probably the Discriminator monitor 2009 will be available at the time of the Constructive dialogue – the government could be asked to inform the Committee on its views about the trends and the results.*

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<sup>90</sup> Discriminatiemonitor 2007, p. 19

## Article 5 Addressing the stereotyped roles for men and women?

The title and the introduction to this chapter in the 5<sup>th</sup> report suggests a more limited interpretation of the government's obligations contained in article 5 than that of (legal) experts and NGOs. The government seems to limit its analysis of the causes of current inequalities between women and men and their solution to the social-economic terrain. It might be worthwhile to look beyond the explanations of economists and sociologists, especially with regard to changing social and cultural patterns and eliminating prejudices. Women's and gender-studies in academia have so much more to offer!

Very recently the Dutch Journal of Genderstudies presented a comprehensive analysis of the process of narrowing down governmental policy development with respect to gender equality to the social-economic terrain starting in the 90s. The policies regarding image making and combating stereotypes have been dropped in the mid 90s.<sup>91</sup> In that sense it is no surprise that the government's report to the UNECE for the 15<sup>th</sup> anniversary of the Beijing Platform for Action states with regard to the critical area of concern J "*The Netherlands has no special policy measures on women and the media.*"<sup>92</sup>

It is noteworthy that the words 'stereotype' and 'stigmatisation' are only used once in the 5<sup>th</sup> report and not in the chapter on article 5. According to experts and NGOs, the government should implement article 5 by actively combating stereotyped images of women and men and examining legislation and policies to identify underlying gender stereotypes. It is clear from the report that the government is not meeting the second obligation in the least.

*The NGOs urge the Committee to elaborate about the obligations following article 5 at the constructive dialogue.*

### 1. Is the government addressing men's stereotyped role effectively?

A joint criticism made by NGOs and political parties regarding the Emancipation Memorandum was the fact that government did not address the role of men. A little attention was paid to men and boys from ethnic minorities, though no concrete measures have been proposed (see Appendix 1 of the 5<sup>th</sup> report p. 39). By paying no attention to other men, the government reinforced a stereotype: men of immigrant background in particular hold traditional views about women.

The objective of increasing male responsibility for unpaid work to a concrete target of a 40% share of care tasks, established by earlier policy plans for gender equality, has been dropped. That met enormous opposition. The Minister for Emancipation argued that the government cannot prescribe that men have to wash socks. By doing so, it became clear that he had not understood the rationale behind the former policy objective nor article 5 of the Convention.

*The NGOs that suggest the Committee ask the government why it dropped the concrete target of 40 per cent share in care tasks of the previous policy plans for gender equality, and how it understands article 5 of the Convention.*

### Government's response to Plan of the Man not very convincing

While discussing the Emancipation Memorandum in parliament, some MP's challenged the government by presenting a 10-point action plan: the Plan of the Man. Some nine months later the government formulated its policy response.<sup>93</sup> The NGOs think it is remarkable that no reference is made to (art. 5 of) the Convention at all.

In its policy response, the government claimed commitment to improving possibilities for women and men to combine labour market participation with care for children and others, and to working towards a fairer share between women and men. It reiterated most of the measures (most targeted at women) already announced in the Emancipation Memorandum - discussed in other chapters of this shadow report. The policy response did entail one new element: the introduction of an award ("the modern men award") on Fathers' day – every third

91 Oldersma 2009, p. 50-51

92 Directorate for Emancipation 2009 no page numbers (p. 15)

93 *Parliamentary Papers II* 2008/09 30 420 nr. 124

Sunday in June - for three role models who should promote 'the modern man' as an ambassador until the next Father's Day. In its policy response, the government referred to "the daddy-day" –one day in the five day working week that a father could spend on his care responsibilities, seemingly unaware of how this expression reinforces the stereotype of the almost always caring mother. One 'daddy day' and how many 'mommy days'?

*The NGOs suggest that the Committee asks the government to spell out its policy response to 'Plan of the Man', and how it intends to change its stereotyped approach to care obligations.*

## **2. Is the government effectively addressing women's stereotyped role?**

Apart from the sub-objective regarding the sexualisation of the role of girls and women (Emancipation Memorandum p.49, 5<sup>th</sup> report p. 54 / 102-104 in CEDAW/C/NLD/5) addressing the stereotyped role of women does not seem a priority of the government. On the contrary: in some respects the government is reinforcing stereotypes.

For example: the stereotype that most women from migrant origin are in a vulnerable position because of not (or hardly) speaking the Dutch language, having no or little education, and being oppressed by traditional husbands. No attention is being paid to the high-educated women from migrant background with sufficient qualifications who experience difficulties in finding a job at the relevant level.<sup>94</sup> In the chapter about article 3, the NGOs pointed at the fact that the highest unemployment is among Surinamese women and those from the Antilles, who traditionally have a high level of labour market participation and a very good command of the Dutch language. Second and even third people with (grand) parents from migrant origin are assumed to belong to those so-called vulnerable groups, even though they generally speak excellent Dutch. The use of the words 'vulnerable' or 'oppressed' in connection with women of migrant origin could in fact be considered as reinforcing stereotypes – why not use 'disadvantaged'?

Reading the Emancipation Memorandum and the 5<sup>th</sup> report one might easily get the impression that women and girls from non-migrant background are all self-sufficient and no longer need any personal development or empowerment.

Another example is the implicit connection of women with motherhood, assuming that all women are mothers (and living with children and a man). Neither the Emancipation Memorandum nor the 5<sup>th</sup> report pays any attention to single women.

The Emancipation-monitor, looking at development in public opinion about stereotyped male-female roles, concludes that things have ground to a halt.<sup>95</sup> The CEDAW-Committee might be shocked to learn that 54 percent of women and 46 percent of men do not have any understanding for mothers of young children working full-time.

*The NGOs hope that the Committee can convince the government it should put more efforts into addressing stereotypes to meet its obligations under article 5.*

## **3. Promotion of diversity hand in hand with combating stereotypes**

In her comments on the Emancipation Memorandum, Professor van den Oudenhoven pointed at the absence of a notion of the incapacity of society and work-organisations to provide a context in which the talents of women and ethnic minorities could be deployed. The other side of that coin, what society and work-organisations could gain by inclusiveness and more diversity, is equally lacking. She underlines the importance of taking stereotypes into account and the need for policy development with regard to higher educated women and men from migrant backgrounds, as well as women and other minorities in order to create role models.

Except for the description of a two-year project about pink senior citizens funded by the

<sup>94</sup> Van Oudenhoven 2007. *Parliamentary Papers II* 2007/08 20420 nr. 117 (letter of deputy minister of social affairs about high unemployment of women of migrant background).

<sup>95</sup> Emancipatiemonitor 2008, p. 140-146

government (in the chapter Article 12, p. 85/p.156 in CEDAW/C/NLD/5) the 5<sup>th</sup> government report does not pay any attention to diversity policies, nor to lesbian, bisexual women and transgenders (LBT). That is a pity for several reasons. The new government has really made a difference, because, for the first time in many years, some funding has been made available for LBT-initiatives. The NGOs commend the government for that. For years, government funding with respect to LGBT was mainly targeted at gay men (or men having sex with men – mostly addressing STI's), or general pink projects without any sensitivity to the fact that the position of gay men and lesbian women might be different in some respects. The above-mentioned paragraph in the 5<sup>th</sup> report is in fact an example of that, apart from the heading ('lesbian women'), the information is presented in gender-neutral language. Recently research about older lesbian women has been completed, and it shows a different picture.<sup>96</sup>

Another reason is that promoting diversity in its true sense, including addressing the heteronormativity in society, would help in combating male-female stereotypes. Trans people would benefit most from that. They have to face a lot of prejudices and stereotyped thinking about their appearance (not fitting in with the dominant (fe)male pictures) or their work potential not matching their professional background and experience nor their gender identity.

*The NGOs suggest that the Committee addresses the subject of promoting diversity as a strategy in addressing stereotypes during constructive dialogue.*

#### **4. Government and politicians reinforce stereotypes in immigration debate**

Apparently it had escaped the government's attention that Q 9 was arranged under the subtitle 'Stereotypes and cultural practices', because the answer does not address the issues of stereotypes and stigmatisation at all, to the disappointment of the NGOs. In their previous shadow report, NGOs criticised the dominant representation of migrant wives as 'incompetent import-brides', while migrant husbands are predominantly seen as 'men who take their chances' to come to the Netherlands. This representation is still very vivid in discussions between politicians as was confirmed in the notes of the Special Rapporteur on Violence against Women.<sup>97</sup> During a recent discussion, a proposition was made to further limit the number of 'incompetent import-brides', which was rejected by the majority in parliament.<sup>98</sup> But the issue has been brought up again by one of the leading political parties. Facts and figures do not support such a policy intervention<sup>99</sup>, but that seems to be of no relevance. The wish to tighten the rules of family reunification seems driven by the idea that it should become more difficult for people from Turkey and Morocco to immigrate to the Netherlands. The government cannot justify its efforts and actually infringes on personal matters such as love and family relationships.<sup>100</sup>

NGOs agree with the Special Rapporteur and think that stereotyped statements by government and politicians categorically stigmatize women and men of immigrant background either as victims or perpetrators, which only increases their marginalization.

*The NGOs suggest that the Committee asks the government for facts and figures that would confirm the government's view of 'incompetent import-brides'.*

#### **5. 'Breaking through the glass wall' continued?**

The government presents results of the ESF-Equal Project 'The Glass Wall' consisting of 8 pilots and involving a total of 150 female participants (p. 52/53, p. 100/101 in CEDAW/C/NLD/5) and is aware that the approach developed should be distributed more broadly. It doesn't mention what measures it will take to do so and what budget will be available. Since the Glass Wall project was the only one addressing the horizontal sex-segregation for quite some years (and financed by EU-money), the NGOs are not too

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96 Vincenten 2009

97 United Nations 2007, para 16-17

98 *Parliamentary Papers II* 2008/09, 31 924 VI, nr. 9

99 Although available, the government doesn't report properly on figures, broken down by gender and education. See INDIAC, 2008: In 2007, of all integration examinees in their home countries, 31 per cent was male and 69 per cent female. Most exam candidates have an average education level (46 per cent), followed by a high education level (27 per cent).

100 Van Roessel, 2009, pp. 22-23

optimistic about the lasting results of this effort in changing socio-cultural behaviour patterns.

*The NGOs suggest that the Committee asks the government to elaborate during the constructive dialogue on the ESF-Equal Project 'The Glass Wall' and what follow-up it intends.*

## **6. Talent to the Top Charter – promising real progress or window-dressing?**

The 5<sup>th</sup> report continues with the Glass Ceiling. The government finally acknowledged that the sequence of Ambassador Networks was 'not sufficient to achieve a true turnaround'. It has therefore decided to develop a Talent to the Top Charter, in conjunction with business and social partners. NGOs think it is a missed opportunity in itself that, from the start, this conjunction did not include semi-public organisations, e.g. health care organisations. Although the top of the care and welfare sector consists of 30% women, this percentage is low considering that 80% of the employees in the care sector are women. Moreover, the percentages in the health sector are lower and decreasing in bigger organisations: from 31% in small to 14% in large organisations. Among doctors, the proportion of women is even further limited: the boards of hospitals counted eighty doctors, of whom eight are women (10%).<sup>101</sup> An NGO in the health sector has therefore initiated the Taskforce 'Talent to the Top in the Care Sector' aimed at increasing the proportion of women at the top in this sector. The NGOs welcome this initiative in itself, but they wonder whether this 'Talent to the Top' approach will pay off in the end. Looking at the average targets of the organisations involved (a rise from 17 to 25% in 5 years – health-care not yet included) it might take another 50 years to achieve equal representation in the top. Judging from the results so far, the initiative could turn out to be hardly more than window-dressing.

*The NGOs are interested to know whether, according to the government, the Talent to the Top Charter is promising real progress or has turned out to be window-dressing?*

## **7. Integrating gender in teacher training more important than increasing number of male teachers**

The government states that, in order to achieve a more diverse personnel complement, more men should choose the teaching profession. During the last years, however, discussions in the media have taken place about the feminization of the education (very few male teachers) and its supposed influence on boys (disappointing school performance). This has become one of the reasons for the government to promote the influx of men into the sector. In the answer to Q 8, the government relates this even to addressing stereotypical gender roles. The Emancipation Monitor 2008 argues, however, that a link has not been proved. School performance and well-being of boys in primary education are not linked to the sex of the teacher. In addition to that, the differences between boys and girls are only present in secondary and higher education where a lot of teachers are male.<sup>102</sup> At the same time, the government admits that teachers treat boys and girls differently, confirming stereotyped roles and creating large differences between the numbers of boys and girls in certain subject clusters and courses.<sup>103</sup>

NGOs therefore think it is more important to increase teachers' gender awareness through integrating gender in teacher education and training. The government is aware of this fact, since it mentions in its report to CEDAW that a plan is being worked out together with the HBO (professional education) training consultants of the teacher training colleges, to put this issue on the agenda in the training. However, the government's (financial) effort to take up these matters is rather unbalanced.

*The NGOs think the government would be more successful in combating and eliminating stereotyped roles for men and women and changing socio-cultural behaviour patterns in the field of education if it focused on the integration of gender in teacher training. The NGOs*

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101 Assmann, van Montfort & Berden, 2009.

102 Emancipation Monitor 2008, p. 74

103 *Parliamentary Papers II 2007/08 30 420 nr. 116* – attached to the Government's report (CEDAW/C/NLD/5/ appendix 10).

Art. 5 – Addressing the stereotyped roles for men and women?

*suggest that the Committee addresses this need for anchoring gender awareness training during the constructive dialogue.*

## Article 6 Combating trafficking in women and forced prostitution

### 1. Criminal approach barrier to protection of trafficking victims

The NGOs are disappointed that the government refuses to acknowledge the shortcomings in the B9-regulation in its answer to Q 27. The major shortcoming is that it makes access to assistance and protection dependent on cooperation of the victim with the criminal justice system, thus failing to provide adequate protection to all victims of trafficking. In the view of the NGOs, the protection of the human rights of victims ought to prevail above the state interest of prosecution. This would be in line with the governments' recognition of trafficking in human beings as a serious human rights violation,<sup>104</sup> and the Council of Europe Convention on Action against Trafficking in Human Beings, to which the Netherlands is in the process of becoming a party. It would also be in line with the recent advice of the Dutch Advisory Board on Immigration Affairs (ACVZ), which proposes to de-link access to protection & assistance and cooperation with the authorities.<sup>105</sup>

*NGOs would like to know if the government is willing to provide access to assistance & protection for victims of trafficking who are not able or willing to cooperate with the criminal justice system.*

#### **Residence permit on humanitarian grounds restricted to limited group of victims**

Under the present B9-procedure victims of trafficking are entitled to a reflection period if there is the slightest indication that they are victims of trafficking.<sup>106</sup> During this period expulsion is suspended. If the victim decides to cooperate with the authorities, she/he is entitled to a temporary residence permit for the duration of the criminal proceedings. Following this temporary residence permit, the victim may apply for continued residence on humanitarian grounds.

The answer of the government to Q 27 suggests that victims who decide not to cooperate (e.g. for fear of the traffickers) can apply for a residence permit on humanitarian grounds. This is not correct. According to the Aliens Act Implementation Guidelines<sup>107</sup>, an application for residence on humanitarian grounds can only be submitted after having been granted a temporary residence permit. The only possibility open to this group of victims is to apply for a permit, calling upon the discretionary power of the Deputy Minister of Justice.<sup>108</sup> It is then up to the Deputy Minister to decide upon the application on a case-to-case basis.

#### **'Discretionary power' is not an official policy**

In the view of the NGOs presenting the option of 'discretionary power' as a 'policy' contradicts the very meaning of the concept of 'discretionary power', that is: exceptions to the rule, e.g. aimed at cases that are not covered by the policy and based on personal (humanitarian) considerations. Since the introduction of the Linkage Act in 1998 (deputy) ministers of Justice have used their 'discretionary power' rather often.<sup>109</sup> NGOs perceive this as utterly problematic as it is unclear and unverifiable on what criteria decisions are based, thus risking creating inequality before the law. NGOs are of the opinion that the government should change its official policy and provide all victims of trafficking adequate protection and assistance, independent of their capacity or willingness to cooperate with the authorities in the prosecution of the traffickers.

*NGOs are interested to know if, as suggested in its answer to Q 27, the government is willing to amend the Aliens Act to enable all victims of trafficking to apply for a residence permit on*

<sup>104</sup> See e.g. Aliens Act Implementation Guidelines (Vc), p. 263

<sup>105</sup> ACVZ, 2009, p.31

<sup>106</sup> In its answer to Q. 27-28 the government mistakenly states a number of times that there should be 'evidence' of trafficking for the police to allow a (possible) victim the reflection period. This is not correct: in order to qualify for the reflection period B9 holds that there should be 'the slightest indication of the person being a victim of trafficking', which is not the same as 'evidence'.

<sup>107</sup> Vc B16/7, resp Vb Art. 3.52

<sup>108</sup> Art. 3.4 sub 3 Vb 2000.

<sup>109</sup> Damen, 2004, pp. 292-298.

*humanitarian grounds, independent of their (previous) cooperation with the criminal justice system and the temporary residence permit granted then.*

### **Role of NGOs not recognized in identification of victims of trafficking**

In the Netherlands, many organisations play a role in the identification of victims of trafficking.<sup>110</sup> The police, however, are the only body qualified to formally identify a victim and give access to the B9-regulation.<sup>111</sup> Many victims of trafficking, however, are too afraid to press charges or to testify because they don't trust the police. They are afraid of retaliation by the traffickers or too traumatised to be able to speak about what happened to them. They remain silent, don't have access to support and often end up in aliens' custody.

NGOs suggest that, in order to prevent victims of trafficking from ending up in aliens' detention and being deported, the role of NGOs in the (early) identification of victims of trafficking should be formally recognized. They recommend that, in order to assess whether or not a person is a victim of trafficking, apart from the police's judgement, information from NGOs and other assistance providers should be taken into account.<sup>112</sup> The government is in favour of cooperation between police and NGOs, but fails to describe how or when such cooperation will be implemented.

*The NGOs are interested to learn if the government is indeed willing to formally recognise the role of NGOs in the identification of victims of trafficking and what steps it intends to take to implement this.*

### **Failure to identify victims in aliens' detention**

Recent research shows that the identification of victims in detention centres for aliens and refugee centres is insufficient.<sup>113</sup> NGOs applaud the initiative of the deputy Minister to issue instructions to the staff of aliens' detention centres and the Return and Departure Service to watch for signs of trafficking and pass these on to police, so they may take steps to lift the detention.<sup>114</sup> They also consider it a positive sign that the government is willing to improve access of NGOs to detention centres.

However, victims of trafficking in aliens' detention are, contrary to the regular B9-procedure, only allowed a reflection period if both police and the Public Prosecution Service agree (Vc B9/3.1). In other words, as stated by the government in its response, 'if there is evidence of trafficking'. This contradicts the character of the reflection period, which is precisely meant to precede the stage of 'evidence' by using a much lighter criterion, i.e. 'the slightest indication that a person might be a victim of trafficking' in order to prevent the deportation of victims of trafficking.

*NGOs would like to know if the government is willing to apply the regular B9-procedure to victims in aliens' detention, i.e. to entitle them to a reflection period on the slightest indication that they might be a victim of trafficking.*

### **NGOs not represented in the anti-trafficking Task Force**

In its answer to Q 29, the government explains the absence of NGOs in the Task Force by stating that this could compromise their independent position. The NGOs, of course, appreciate the concern of the government, but cannot understand how participation in the taskforce would undermine their independence. They think it quite peculiar that both the National Rapporteur and the NGOs think participation of NGOs would enhance the work of the Task Force without fearing for loss of independence. The government states that the input of NGOs is sufficiently guaranteed by the bi-annual consultation, but fails to explain how the input of NGOs is taken into consideration.

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110 'Prostitution control teams' of the Morals Police, Aliens Police, Royal Military Police at Amsterdam Airport, Labour Inspection / Social Intelligence and Investigation (SIOD), IND staff in detention and refugee centres, lawyers, prostitution field workers, social workers and other assistance providers.

111 BLinN, 2009, pp. 17-18.

112 BLinN, 2009, p. 52.

113 BLinN 2009; Van Vianen et al 2007

114 *Parliamentary Papers II* 2008/09, 28 638, nr. 39 p. 27.

*NGOs suggest that the Committee asks the government to reconsider the role of NGOs in the taskforce or at least explain how the input of the bi-annual consultation relates to decisions of the Task Force.*

### **No government response to recommendations of the National Rapporteur**

The government has not yet given its opinion on the recommendations of the Fifth Report of the Dutch National Rapporteur on Trafficking in Human Beings (summer 2007), nor have these been debated in Parliament. Consequently, many of the 66 recommendations made in the 5th report are not yet implemented, as the Rapporteur notes in her 6<sup>th</sup> report.<sup>115</sup>

*NGOs would like to suggest that the Committee urges the government to provide a detailed response to the 5<sup>th</sup> and 6<sup>th</sup> reports of the National Rapporteur and to further implement their recommendations.*

## **2. Criminalisation of unregistered prostitutes does not improve their position**

In its report and its answers to Q 30, the government fails to mention that in the new Prostitution Bill it is not only proposed to criminalise clients of unregistered prostitutes, but also prostitutes who are not willing or able to register.<sup>116</sup> This would be the first time in Dutch history since 1810 that prostitutes themselves are criminalised. Although presented as a measure to improve their position, prostitutes and NGOs do not feel that mandatory registration contributes to their empowerment. Nor will it help to combat trafficking and other forms of violence against sex workers. Rather than empowering prostitutes, NGOs fear that the new Bill will further stigmatise sex workers, create more obstacles for them to work legally, safely and independently, and lead to a further flight into the illegal and unprotected sex sector.

In its answer to Q 30, the government states that after having registered as prostitutes self-employed women may set up and work anywhere, as long as they work alone. However, City Planning Ordinances in a great number of municipalities forbid home-based prostitution. NGOs would like to know whether, under the new Bill, municipalities would be obliged to repeal such ordinances. If not, this will mean that if a home-based self-employed prostitute registers herself she will be 'legal', but not allowed to work. However, if she does not register, she will not only work 'illegally' but will also be criminally liable, as are her clients. Moreover, if self-employed prostitutes for reasons of safety prefer to work together with colleagues in one apartment this is considered to be a prostitution business. This means they must apply for a license, which they probably won't get because most municipalities have maximised the number of licenses. Moreover, municipalities will have the possibility under the new Bill to forbid prostitution businesses.

The government continues with the statement that measures will be taken to protect the anonymity and privacy of registered prostitutes. However, NGOs are not convinced that these measures will be adequate. They fear that mandatory registration will lead to a further flight to the illegal sex sector, not only of migrant but also of Dutch sex workers, as well as to the further stigmatisation and social exclusion of prostitutes. Rather than combating trafficking this will make them an easier prey for violence and abuse.

### **Mandatory registration of prostitutes does not help to combat trafficking**

NGOs question whether mandatory registration is an effective means to combat trafficking. The most it probably will do is give the authorities a false feeling of security. The mere fact that a prostitute is registered does not mean that she cannot be or become a victim of trafficking. Recent cases show that paper barriers are not effective in stopping criminals, and that trafficking also happens in the licensed and 'controlled' sector. Moreover, migrant women cannot register at all, as the present Migrant Labour Employment Act (Wav) prohibits the issue of working permits for work in the sex sector.

A major problem in combating trafficking is that, in many cases, there are plenty of indications but these are not followed up by law enforcement authorities. Another is the lack of long-term

<sup>115</sup> National Rapporteur Mensenhandel 2008, p. 1

<sup>116</sup> E.g. because they are undocumented or because they want to protect their privacy.

protection and perspectives for victims of trafficking. Both problems are not solved by mandatory registration of prostitutes. On the contrary, chances are high that precisely those women who work under duress will be duly registered. They will be forced to do so by their exploiters, whereas independent prostitutes will avoid registration. Moreover, experience shows that it is illusory to think that one interview is sufficient to identify victims of trafficking. Identification above all requires expertise and patience to gain the trust of the victim. In addition, the implementation and enforcement of a system of mandatory registration will divert scarce police resources from investigating real cases of trafficking into maintaining a bureaucratic system that mostly exists on paper. At present, the police already complains of lack of manpower to investigate (indications of) trafficking cases.

### **Criminalisation of clients will not protect prostitutes or combat trafficking**

NGOs want to express their concern about the proposed criminalisation of clients of unregistered prostitutes. NGOs are not convinced that clients should be made responsible for verifying registration and residence permits of prostitutes, if even the police finds it difficult to identify false papers. They are also concerned that clients will stop reporting indications of abuse and coercion to the police, because of fear of prosecution if a prostitute appears to be illegal and/or unregistered. Experience teaches that clients play an important role in reporting abuse to the police or helping women to escape coercive situations. Moreover, criminalising clients will add to the stigmatisation of prostitutes, which has a negative impact on both those working on their own accord and those working under coercion. A more effective approach is awareness raising of clients and encouraging them to report abuses, as has been done in the successful 'Report Crime Anonymously' campaign.

*NGOs are interested to learn what makes the government believe that mandatory registration of prostitutes and the criminalisation of unregistered prostitutes and their clients will improve the position of prostitutes. They would also like to know if, under the new Bill, cities will be obliged to repeal city planning ordinances that prohibit prostitutes to work at home.*

*Given the serious concerns of both NGOs and sex workers about the possible negative impacts of the proposed measures on prostitutes, the NGOs would like to know if the government is willing to carry out a Gender Impact Assessment before introducing the proposed measures. They also want to know what measures the government proposes to secure the rights of prostitutes and to include their voice in the development and implementation of prostitution policies.*

### **Disproportionate quantity of funds for exit programmes prostitutes**

The lifting of the ban on brothels served three major aims: the regulation of prostitution, the combating of trafficking and other abuses, and the improvement of the position of sex workers. A major failure in the implementation of the law has been the lack of measures to improve the position of sex workers, as is shown in various evaluations. Significantly, the two expert organisations on prostitution and trafficking in women lost their funding in 2004 and had to stop their activities. The only remaining prostitutes' rights organisation, the Red Thread, has been struggling to survive and is on the verge of having to close its doors. Although the government report maintains that 90% of the prostitutes work as self-employed, this is mostly a paper construction, as it has been decided not to apply regular labour and social security law to sex businesses. This means that sex workers are considered as self-employed even if they actually work for an employer.

In the light of this situation, NGOs feel that the government disproportionately focuses on the development of exit programmes for prostitutes who want to change profession. In addition to its information in the 5<sup>th</sup> report (p. 62 / p. 116 in CEDAW/C/NLD/5), the Ministry of Justice has allocated 15 million euros extra to fund these programmes. NGOs suggest that an active policy should be implemented on reducing the power of pimps, improving working conditions and enhancing the autonomy of prostitutes.<sup>117</sup> This should be done in cooperation with relevant state agencies, (organisations of) sex workers, other parties directly involved, and NGOs working in the field to overcome the barriers for prostitutes to claim their (labour) rights.

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117 Wijers 2009, pp. 83-84.

*NGOs are interested to learn if the government is willing to spend at least the same amount of money on empowerment activities for sex workers as on exit programmes.*

### **3. Trafficking and exploitation in other sectors than the sex industry**

Currently 'labour exploitation'<sup>118</sup> is not defined in the criminal law, despite a recommendation of the National Rapporteur in her third report that this should be done. Consequently, it is left to the judiciary to develop a definition through case law. Cases of trafficking for exploitation outside the sex industry, for example in domestic work, seldom lead to a conviction. In general, the main focus is still on trafficking for the sex industry, leaving victims of other forms of exploitation unrecognised and unprotected. The NGOs subscribe to the recommendations of the European Commissioner for Human Rights in his report of March 2009, in which he urges the government to follow the recommendation of the National Rapporteur speedily to end ambiguity, thereby enhancing protection for victims of exploitation outside the sex industry.<sup>119</sup>

*NGOs suggest that the Committee asks the government why it has not yet implemented the recommendation to define 'labour exploitation'.*

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118 In fact this is an inaccurate term as prostitution is also considered to be labour in the Netherlands.

119 Commissioner for Human Rights 2009 (a), p. 23, para 91

## **Article 7 Equal participation in political and social life & Article 8 Equal representation at the international level**

### **Still a long way to go?**

This chapter in the 5th report does not meet the requirements as formulated in General Recommendation 23 para 48 and 50. The NGOs are concerned that the importance of the implementation of article 7 might not have been understood, despite the fact that it was emphasised in the Preamble of the Convention and the Beijing Platform for Action.

*The NGOs suggest that the Committee asks the government how it implements General Recommendation 23.*

### **1. Equal representation of women in political and social life no longer an aim**

The government seems to focus in its report on the numerical participation of women in elected political bodies. In the opinion of the NGOs, it should strive for participation of women on equal terms with men, which means the aim should include increasing the influence of women. In general, men are still heavily overrepresented in political and public decision-making, even in bodies where the numerical participation of women is seemingly not too bad. *“Still too many obstacles keep women away from leadership positions in politics, while at the same time women are needed in these high-level powerful positions, because then they can take decisions in order to change the underlying structural mechanisms that favour men”.*<sup>120</sup> Im- and explicit rules about collaboration between women of different political parties have increasingly limited their influence.<sup>121</sup>

The major increases in the percentages of elected women representatives occurred in the last decades of the 20th century. In its policy plan of 1992, the government stated that certainly no shortage of qualified women existed.<sup>122</sup> A project aiming at equal participation was launched, and targets were set. In 1996, the targets were raised, aiming at equal representation of women and men in all elected bodies in 2010. These targets were reiterated in the Multiyear Policy Plan of 2000, but have not, by any means, been met. Since 1998, the percentage of women in the House of Representatives has been remarkably stable, around 40%: always a slight increase after the formation of the government from 37% after elections to a little higher<sup>123</sup>, indicating that more women are to be found lower on the lists of candidates of the political parties. The reason that the target of 50% is never met is that several parties still place fewer female than male candidates on the list, and they place them lower. In 2005, with the adaptation of the Multi Year Policy Plan, the target for women's participation in all politically elected bodies has been lowered to 45 per cent in 2010.<sup>124</sup> The Emancipation Memorandum no longer contains any such targets. There cannot be any doubt that, without further measures, it will take many more years to come to the de facto equal participation and influence that should be achieved according to the Convention.

*The NGOs suggest that the Committee asks the government why it dropped the targets to achieve equal representation in the politically elected bodies and whether it is considering extra measures.*

### **2. Lasting stagnation in political participation at local level**

Especially in municipal councils, often considered a stepping-stone to higher political posts, male members still outnumber their female colleagues by far (74 versus 26%). This is an average: in 24 of the 442 local councils, the percentage of elected women was less than 10 %, and in 7 councils not one woman was elected. A more positive picture arises from other

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<sup>120</sup> Leyenaar 2004, p. 7

<sup>121</sup> Leyenaar 2004, pp. 167-171

<sup>122</sup> Beleidsprogramma Emancipatie 1992-1995, *Parliamentary Papers II* 1992/93 22 913 nr.2 pp.126-134

<sup>123</sup> <http://www.Vrouwenbelangen.nl/politiek> and Emancipatiemonitor 2008 p. 211. There are some discrepancies between the figures of the Emancipatiemonitor and the figures of the 5th report at p. 65/ 121 in CEDAW/C/NLD/5) – the largest difference is in the European Parliament (44 versus 52 %).

<sup>124</sup> *Parliamentary Papers II* 2005/06 30 420 nr. 2 p. 37

municipalities: in 34 councils more than 40 % of seats were awarded to women; in one of them just over 50%. The figures for aldermen are even worse, as is the number of mayors. The activities described in the government's report are mainly targeted at increasing the number of female candidates available for election. The NGOs doubt whether this approach will pay off in the near future, because it is questionable whether the availability of qualified female candidates is the root problem (in 1992 the government was already convinced there was no shortage). To the disappointment of the NGOs, the government seems to disregard recent and comparative research about the low participation of women at local level.<sup>125</sup>

It is also likely that similar processes are taking place as in other sectors preventing women from breaking through the glass ceiling, achieving and holding top positions and ensuring a more permanent female representation in decision-making positions (see also the Chapters Art. 3.8, Art. 4/11.1 and Art 5.1).

It is common knowledge that the 'political colour' of the candidate plays a role in nomination processes, as well as in appointment processes, especially in the larger cities. Requiring double nomination could be a solution. Introduction of more transparency and accountability with regard to gender in the nomination and appointment processes, including the composition of municipal selection committees, should be considered as well. Another possible strategy is the one used by the European Commission, described in chapter Art. 4/11 – signalling that political parties with qualified female candidates have better chances. *The NGOs suggest that the Committee asks the government's view about its approach vis-a-vis the recent research, and about other strategies to raise the participation of women in local politics.*

### **Backlash in nomination and appointment of Queens Commissioners**

A similar problem exists with regard to the government's nomination and appointment of Queens Commissioners in the provinces. The Committee should know that since the 5<sup>th</sup> report, the percentage has dropped again to 8 (one of the smallest of the 12 provinces), though several appointments have been taken place. At this speed, resembling that of an Echternach procession, it could take 100 years or more before equal participation is achieved.

*The NGOs suggest that the Committee asks the government for an explanation of the low number of female Queens Commissioners.*

### **3. Ensuring women's participation in the formulation of government policy?**

In the view of the NGOs, the disparity between the participation of men and women has adverse effects. It was noticeable that, at the beginning of 2007, no women participated in the negotiations for a new Coalition Agreement. Accordingly, male perspectives dominated the result. Women did not come into the picture unless in their role as parent/mother or victim (of violence/unequal pay etc.). The omission of any mention of an emancipation policy was (partly) repaired. But, basically, women were not given any possibility to influence the frame within which the coalition intended to operate for their full governing period. Letters to political parties and to the government presenting women's interests and perspectives for inclusion in election programs did not have any effect either. Since, in the Dutch context, the Coalition Agreement is a rigid rule of conduct for government policy, this is problematic.

*NGOs would like to know how the Committee evaluates the lack of influence of women in the light of article 7, para (b): the State's obligation to ensure women to participate in the formulation of government policy? Could the Committee discuss how to develop more effective ways to present women's interests and perspectives in constructive dialogue with the government?*

### **4. No convincing answer to Q 25 - refusal to use quota for political positions**

In its answer to the Committee's question whether the government would consider temporary special measures, the government states that the use of quota clashes with basic democratic and constitutional principles, without explaining how. In this way, the government suggests that countries that do use quotas or other temporary measures, like Belgium, Spain or India to name a few, violate such principles. In the view of the NGOs, this is not acceptable. The

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<sup>125</sup> Leyenaar 2004, pp. 138-145 and pp. 299-314

NGOs cannot understand why the use of quotas interferes with the freedom of political parties and the principle of equality. Any democratic party could find enough competent candidates of both sexes to nominate. Moreover, as General Recommendations 23 & 25 explain, other temporary special measures are possible. In other situations, the system of double nomination works very well to achieve a better representation of women.

The government's opinion that better results can be achieved with other measures is not proven by facts and figures concerning the number of female mayors, Queens Commissioners and aldermen. The government continues in its answer to repeat the activities already described in the 5<sup>th</sup> report, without presenting any concrete results, which could have been done, since it is now more than a year later. No clue is given whether the government is prepared to consider other measures when its activities do not pay off. In other countries, the announcement of preparation of legislation or other measures triggered a major improvement in women's participation and representation. So why not use this strategy in the Netherlands?

*The NGOs suggest that the Committee addresses the unsatisfactory attitude of the government towards quotas and other temporary measures at the constructive dialogue.*

#### **5. Could changes in electoral system achieve equal participation of women?**

In the light of the overall stagnation described above, the NGOs think it might be possible that a more fundamental change of the electoral system is needed for full implementation of Article 7 of the Convention. Under previous governments over the last 15 years, various proposals for changes in the system have been under discussion, though never taking the implementation of the Convention into account.<sup>126</sup> In that light, NGOs think in-depth research to relate possible changes in the electoral system to the interpretation and implementation of the CEDAW Convention and the International Covenant on Civil and Political Rights might pay off.

*The NGOs suggest that the Committee discusses with the government whether it is willing to commission an in-depth researching to Article 7 of the Convention, and possibilities for changes in the electoral system.*

#### **6. Poor information about representation at the international level**

In fact, the government limits its report on Article 8 to three lines about the number of women in higher positions in foreign posts. Though there is a certain progress, the process is very slow and the figures disguise the fact that these women are in general not representing the government in what are considered the most important embassies, consulates, etc. Figures about women's representation in other high-ranking international positions are not presented. Policies to increase the number of women at the international level are lacking, let alone appropriate measures.

*The Committee could request the government to provide more information about figures related to women's representation in high-ranking international positions, as well as policies to increase the numbers in its next report.*

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<sup>126</sup> *Parliamentary Papers II 2003/04*, 29 356, nr 1 and *II 2004/05* 29 986, nr. 3, pp. 18/9

## **Article 9 Equal rights of obtaining, changing or retaining a nationality & Article 16 Equal rights in respect of marriage and family relationships**

In its report, the government has put article 9 and 16 together and combines its answers to the legal recommendations on surnames, foreign partner foundation and family reunification policy, and the dependant's residence permit (CEDAW/C/NLD/4 no. 27, 28, 33, and 34). NGOs regret that the government hasn't provided more information on the changes in its law with regard to family formation and family reunification, although the CEDAW Committee has already expressed its concern about the consequence that many immigrant, refugee and minority women are unable to qualify for independent residence permits because of stringent requirements in law and policy.<sup>127</sup> NGOs will follow the government's report and discuss issues under both article 9 and article 16.

### **1. Gender-Based Discrimination in the Law on Names**

In its report, the government has responded extensively to the concluding comments of CEDAW (pp. 74-5/ pp. 137-139 in CEDAW/C/NLD/5). Although the government denies the discriminatory implications of the Law on Names, it has promised to establish a working group that would review the law on surnames as laid down in the Dutch Civil Code and the Decree on family name changes. The minister of Justice confirmed this in response to a question about the treatment of the registered partnership bill, in which the member of the Senate concerned referred to the Concluding Comments of the CEDAW Committee.<sup>128</sup> Based on its findings, the government proposed to present a standpoint in the spring of 2009. However, its planning seems to have been too optimistic. NGOs are not aware of the government's standpoint as yet.

*NGOs suggest that the Committee asks for an update on the progress of the working group that reviews the law on surnames and the government's standpoint on this.*

### **2. Tightening rules on family reunification disproportionately affects women**

As requested by the Dutch Parliament when taking up the recommendation of the CEDAW Committee, the effects of the tightening of the Dutch rules on family migration in 2004 have been recently evaluated.<sup>129</sup> The government provides these data in its answer to Q 26. Unfortunately, the evaluation study has been restricted to successful applications of Provisional Residence Permits (MVV) and doesn't include respondents who failed in their attempts or ones who didn't even bother to apply due to the restrictions. Also, the evaluation has not incorporated the effects of the Civic Integration Act (Wib). Therefore the results might be (way) too optimistic. The conclusions however, confirm the NGOs' opinion that female residents (the hosts) experience more difficulties in being reunited with their partners than male hosts. The raise of the income requirements is the main cause of difficulties (120% of the statutory minimum wage for 23 year olds, which corresponds with 160% of the statutory minimum wage for 21 year olds; a stable employment relationship of at least one year). The extremely high costs involving family-reunification add to this financial barrier. Especially for single mothers (hosts), it is almost impossible to meet the income requirements.<sup>130</sup> These concern reunification with partners from western countries as well, applying for a residence permit (VVR) instead of a Provisional Residence Permit (MVV). In absolute numbers, residence permits have dropped considerably, (48% for women, and 32% for men). The researchers describe this disparity as striking. For the NGOs, it is no surprise: women work in sectors where fulltime and steady jobs are rare (education, healthcare) and it is common knowledge that the wage difference between men and women remains problematic even when there is no difference in education level. The gender differences with respect to Turkish, Moroccan and Surinamese hosts seem less evident. The idea that the host should have sufficient resources to bear the full cost of the residence of the partner (i.e. an income 20%

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127 CEDAW/C/NLD/CO/4 nr. 27

128 Parliamentary Papers I 2008/09 Proceedings 3-134 pp. 165-166

129 See WODC, 2009; CEDAW 2007 par. 28.

130 E-quality 2009

above the breadwinner's statutory minimum wage) is in sharp contradiction with the government's gender equality policies – in which both partners are encouraged to participate in the labour market

The government has rejected any indications of gender differences in the consequences of Dutch rules for family reunification, and maintains this position according to its answer to Q 26. In the context of modernizing migration, the government is even preparing policies to further restrict - and stigmatize (as indicated above and in article 5) - family migration (as opposed to knowledge migration). The government should be able to elaborate on this during the constructive dialogue, according to its answer to Q 26.

*The NGOs doubt whether the current family migration policy of the Netherlands complies with its international obligations under CEDAW article 16 and would appreciate knowing the Committee's opinion on this matter.*

### **Policy on knowledge-migration violates family relations**

Since October 2004, a special admissions policy has been introduced for foreign employees who are in high demand. Dutch employers, who are prepared to pay a substantial salary<sup>131</sup> for an employee from outside of the EU, can hire that employee without having to apply for an employment permit. The residence permit of such a so-called "knowledge migrant" is granted for the length of the employment contract, up to a maximum of five years (after which the migrant can apply for permanent status). Partners of these "knowledge migrants" have free access to the Dutch labour market. However they have to renew their residence permit after a year, and their right to reside remains dependent of that of the knowledge migrant, regardless of whether or not they have found employment of their own. Their children receive a residence permit valid for the same period as that of the "knowledge migrant". Hence, in the event of marital conflict, the dependent spouse can lose status while the "knowledge migrant" and the children are still allowed to remain in the Netherlands. NGOs think this difference violates the CEDAW Convention article 16, based on CEDAW's general recommendations 21 article 16 (1) (c), 18 "granting the parents of children equal status".

*NGOs suggest that the Committee asks whether the government is prepared to provide residence permits to both children and partners on an equal basis: for the length of the knowledge migrant's employment contract.*

### **3. Time limit for family reunification refugees violates article 16**

The Dutch NGOs believe that the Government does not display enough effort to actively protect the unity of families of refugees and asylum seekers in its family reunification procedures. An important policy measure has been a shortened, with a time limit from six months to three months, within which refugees can apply for family reunification without having to meet income requirements. Although the Dutch Ministry of Justice has made some exemptions to this strict application, these have unfortunately only been applied to a limited group.<sup>132</sup> NGOs consider the reduced time limit a major obstacle to family reunification, since three months is too short a time to be able to locate family members in (often) situations involving war and oppression, and to take the necessary administrative steps, often requiring time-consuming efforts such as having to travel to a Dutch embassy in another country.

*NGOs urge the Committee to ask the government why it does not change its stringent policy on family reunification, which appears to violate international Conventions.<sup>133</sup>*

### **4. Increased dependency of residence permit affects women more than men**

For many years, NGOs have concluded that the dependent residence permit affects women more negatively than men. The legal dependency to the right of residence on their husband/partner can be a serious obstacle for the process of emancipation and integration of

<sup>131</sup> What is considered to be substantial varies depending on the circumstances. For a foreign employee older than thirty, and not hired by an academic institution or otherwise subject to special rules (for performing artists, for example) an employer will have to pay € 45,000 gross per annum.

<sup>132</sup> *Parliamentary Papers II 2007/08*, 19 637, no. 1181.

<sup>133</sup> The Convention on the Rights of the Child, art. 10; CEDAW article 16 (d).

migrant and refugee women (who arrived after their husband were granted refugee status) in the Netherlands. Recently, the government provided data with numbers of men and women who arrived on grounds of family migration.<sup>134</sup> These numbers show that more women than men (in 2009, 66% women and 34% men) are granted residence permits based on grounds of family formation or reunification. That means that the policy of dependent residency also disproportionately affects women. The response of the government so far is aimed at a further increase of the requirements for family migration instead of a strengthening of the rights of women. For example: in order to obtain a permanent or independent residence permit, yet another Civic integration exam in the Netherlands is required after three years of residence permit for family forming or reunification. Only in the case of domestic violence is the requirement dropped, provided that this violence is demonstrated by means of a statement from a physician/medical counsellor, a social worker, or a women's shelter. The violence must be reported to the police, but an official charge or indictment is no longer obliged. This latter is an improvement compared to former legislation.

As an answer to the recommendations of the CEDAW Committee, the Dutch government describes the policy of the dependant's residence permit in its report (p. 75 / p. 139 in CEDAW/C/NLD/5). Also, the government promises (p. 23/ pp.45-46, CEDAW/C/NLD/5) to provide information on the number of women who were granted refugee status on grounds of domestic violence (CEDAW/C/NLD/CO/4 no. 28). These numbers have yet to be provided.

*NGOs suggest that the Committee requests the government to provide the most recent figures or data on the number of women who were granted refugee status on grounds of domestic violence.*

#### **Pregnant women screened HIV positive should obtain residence permit**

A specific problem exists for those women with a dependent residence permit who happen to be found HIV-positive after screening for pregnancy. To be abandoned by the husband is a real risk, while returning to the country of origin is no viable alternative, because of the prevalent social isolation and ostracism of HIV-positive women. Even when, in theory, mother and child could have access to treatment in the country of origin, in practice this is not likely to happen. The NGOs think mother and child in this rather limited number of cases<sup>135</sup> ought to be entitled to an independent residence permit and HIV-treatment.

*NGOs suggest that the Committee requests the government to grant pregnant women screened HIV positive with a permanent residence permit and HIV-treatment.*

#### **5. Plan for parenthood limits access to divorce proceedings**

Since March 2009, couples with children have to submit a joint plan for parenthood to the court before applying for a divorce. This condition makes it more difficult to start divorce-proceedings; and even more to do it on short notice. As women more often start divorce-proceedings, the new law affects them more. Of course it is to be preferred that parents make good arrangements about their children in case of a divorce, and within the divorce-procedure such arrangements can be promoted. But by requiring a joined parenthood-plan before even starting proceedings, access to divorce-proceedings is seriously limited. The parent (more often the father) who does not want the divorce can seriously frustrate and delay the proceedings by not cooperating. The law states that, in some cases, a combined parenthood-plan is not compulsory; for example for women staying in a women's shelter. NGOs are of the opinion that all victims of domestic violence should have the possibility to start divorce proceedings without having to make a joined parenthood-plan with their abuser.

*NGOs suggest that the Committee asks the government about the effects of the new law that requires a joint plan for parenthood before applying for a divorce; both in theory as in practice, for women in general, and for victims of domestic violence in particular, and requests the government to provide this information in the 6<sup>th</sup> report.*

<sup>134</sup> *Parliamentary Papers II 2009/10 32175 nr. 1*

<sup>135</sup> In 2006, 14,385 women were offered an HIV test in Amsterdam (4 persons refused). The total HIV prevalence was 0.17% (24/14,381). Of these 24 women, 21 knew their HIV positive status and 22 had a non-Dutch origin (15 sub-Saharan Africa, 5 Surinam/Antilles, and 1 Belgium). Source: Bovée & van den Hoek, 2007 in RIVM, 2008

## **6. 'Love exiles' same-sex couples welcome in the Netherlands**

The Dutch government recognizes article 16 to be applicable to same-sex couples. NGOs commend the government for that. For citizens of the Netherlands, it is possible to obtain a residence permit for their same-sex partner or spouse – though they face the same restrictions described in the previous paragraphs. Because, in many countries, same-sex couples experience barriers to living together, quite a few love-exiles ended up living in the Netherlands. NGOs also commend the government for acknowledging persecution based on sexual orientation or gender identity as a ground for qualification for a temporary residence permit. However, there are still some problems caused by the Dublin protocol. Asylum seekers have to apply for a residence permit in the EU country where they arrived, even though not all EU member states consider persecution based on sexual orientation or gender identity as legal grounds for an asylum request.

*NGOs suggest that the Committee commends the government for recognizing article 16 to be applicable to same-sex couples.*

*NGOs also suggest that the Committee commends the government for acknowledging persecution based on sexual orientation or gender identity as a ground for qualification for residence permits. The Committee could request the government to take up its leading position on LGBT human rights to solve existing problems for LGBT asylum seekers caused by the Dublin protocol.*

## **7. More priority for non-legal measures in combating forced marriages**

During the last couple of years, the government has put quite a lot of effort in trying to get an overview of the impact of forced marriages in the Netherlands. Two research projects were conducted to explore the nature and approach to forced marriages.<sup>136</sup> However, due to a lack of registration by the police and/or assisting authorities, it is still not possible to clarify the prevalence of forced marriage. The latest report also shows that progress in preventing and combating forced marriages is expected to come from the use of non-legal measures; for example increasing the expertise of professionals about the problem, providing information and assistance to potential victims of forced marriages, and providing assistance to Dutch and foreign nationals who reside in the Netherlands or abroad. The Minister of Justice has announced intentions to take both legal and non-legal measures to prevent and combat forced marriages.<sup>137</sup>

NGOs would greatly appreciate a shift of a focus to non-legal measures, as preventing forced marriages shouldn't lead to further restrictions on family formation and family reunification.

*NGOs urge the Committee to request the government to shift focus towards non-legal measures that prevent and combat forced marriages instead of further restricting family formation and family reunification.*

## **8. No general pardon for wives of so called '1F' asylum seekers?**

The 5<sup>th</sup> report does not give any information on consequences for women and children of the general pardon the new Dutch government agreed on for asylum seekers who entered the Netherlands before 2001. The general pardon is not applicable to asylum seekers who may have been involved in crimes against the peace, war crimes, or crimes against humanity (article 1F of the Geneva Convention) and their relatives. Because of the '1F-exception' of husbands/fathers, women and children were also denied residence permits. The NGOs consider this dependency on the status of the husband not compatible with art. 9 of the Convention. Those women and children should have their own entitlement to the general pardon.<sup>138</sup>

In November 2008, the government adapted its policy in this matter: family members (wives and children) of alleged war criminals who have lived in the Netherlands for ten years or more

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<sup>136</sup> ACVZ, 2005; Bureau Beke, 2009.

<sup>137</sup> *Parliamentary Papers II* 2008/09, 30 388, nr. 34

<sup>138</sup> *Justitia et Pax & Defence for Children International* 2008; Van Kalmthout 2006

could obtain a residence permit if they met a set of cumulative conditions.<sup>139</sup> One of these is an uninterrupted stay in the Netherlands for at least ten years, which is longer than for other applicants under the general pardon. Not even a very short stay abroad or crossing the border for urgent reasons is accepted. Cases are known of women and children who have lived in the Netherlands for more than ten years but their husbands/fathers took them over the border for a family visit for a couple of hours. In other cases, they have been to hospitals in neighbouring countries for urgent medical care, which was denied to them by Dutch hospitals and doctors. In these specific cases, the women and children cannot meet the cumulative conditions of the Dutch government.

*The NGOs would like to suggest that the Committee raises this issue with the government: how many women and children do not qualify for the general pardon because they crossed the Dutch border for medical or other serious reasons? Can the government explain, in the light of the requirements of the Convention, why a more lenient approach cannot be considered?*

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<sup>139</sup> Wijziging Vreemdelingencirculaire 2000 [via overheid.nl]; Stc 2008/232, Besluit van 18 november 2008, nr. 2008/29, (1F) B1/4.4Vc, C2/6.3 Vc, C4/3.11.4Vc

## Article 10 Equal right to education

### 1. Many activities to diversify educational opportunities but results unknown

NGOs appreciate the number of activities the government has implemented to eliminate occupational segregation, in particular through the further diversification of educational and training opportunities, as required by CEDAW in its Concluding Comments (CEDAW/C/NLD/CO/4 nr. 30). The government particularly mentions activities to increase the participation of women in science and technology. Unfortunately however, hardly any results of these activities are presented. In the report the government again fails to disaggregate its figures and numbers.

*NGOs would like to know how the government is monitoring and evaluating implementation and results of the activities, both qualitatively and quantitatively. NGOs would like to stress again that the government should disaggregate the figures regarding education by gender, ethnicity and educational level - where necessary and feasible - to make the dynamics of these different groups visible and to be able to develop targeted policies.<sup>140</sup>*

#### **Decrease or increase of gender segregation in secondary education?**

Early 2008 results of the Parliamentary Inquiry on Educational Reforms (PI) revealed an increase in gender segregation: in vwo (pre-university education) schools, the number of students opting for science subjects (Physics & Technology) has declined, especially among girls.<sup>141</sup> This causes a decrease of the female potential for beta-oriented studies, certainly another effect than the government is aiming for.<sup>142</sup> NGOs are surprised that these results contrast with the results mentioned in governments report, e.g. an increase in the numbers of girls who choose science subject combinations in both havo and vwo (p. 80/ pp. 148-149 in CEDAW/C/NLD/5).

*Therefore NGOs are interested to learn how the education innovations actually influence gender segregation, and what measures the government intends to take related to the outcome of the Parliamentary research to diminish gender segregation.*

#### **End of another expert organization**

At the same time, NGOs would like to express their concern about a major loss in the field of gender awareness in technology education in primary and secondary school. An important forerunner and expert organization – Technika 10 NL – has recently had to stop, unable to find sponsors due to the credit crunch.

*NGOs suggest that the Committee asks the government to provide the necessary funding to keep important activities, such as a website, a network of more than 40 local Technika 10-organisations and the organization of Girls day.*

#### **Shortfall in mathematics of girls from migrant origin**

In general, pupils of migrant origin perform worse on tests set by the National Institute for Educational Measurement (cito) compared to pupils of Dutch origin. More recently, this disadvantage was explained in socioeconomic terms instead of ethnic background, which is more in line with the actual disadvantage suffered.<sup>143</sup> Girls perform better in language, boys in mathematics. However, NGOs are concerned about the significant decrease of the average score in mathematics in the Netherlands compared with 2003.<sup>144</sup> This decrease is mainly attributable to the lower performance of girls in general, with even a bigger gap when it comes

<sup>140</sup> See for instance Herweijer, 2009, pp. 27-39.

<sup>141</sup> *Parliamentary Papers II 2007/08*, 31 007, nr. 6. This evaluation was of great importance to a broader discussion about the influence of education innovations to learning performances of students in secondary education.

<sup>142</sup> *Parliamentary Papers II 2007/08*, 31 007, nr. 6, p. 63, pp. 114-115

<sup>143</sup> Herweijer, 2009, p. 13

<sup>144</sup> *Parliamentary Papers II 2007/08*, 31 007, nr. 6, p. 121

to girls of migrant origin.<sup>145</sup>

*NGOs suggest that the Committee asks the government for a view on the causes of this decrease and what measures it will take to improve students' performance in mathematics, especially that of girls (of migrant origin).*

## **2. Educational streaming at an early age limits inflow of girls into science studies**

NGOs are concerned about the young age at which students must choose subject combinations in havo (senior general secondary education) and vwo (pre-university education). According to the government, the educational system is aimed at making early choices, even though it is a known fact that at a young age (especially age 13-15) people tend to make more traditional choices.<sup>146</sup> Due to these mechanisms, only very few girls choose the 'harder' subject cluster of Nature & Technology. The ultimate result is that studies such as science, mathematics and computer science, engineering, industry, agriculture and veterinary studies are not accessible to girls.<sup>147</sup> The government is taking ineffective measures to combat this, but refuses to postpone the age at which students need to choose, while research shows that postponing is possible. Furthermore, the government only refers to a letter of the Minister of Education, Culture and Science about the Sardes report, without providing its own standpoint.

*NGOs are interested to learn what the government's reasons are for failing to postpone the age at which students choose their study-profiles and what alternative measures are taken to ensure equal access to all curricula.*

*NGOs suggest that the Committee asks what the government finds important and what it intends to do with the outcomes of the Sardes report, instead of just referring to appendix 10.*

## **3. Obstacles for women to 'lifelong learning'**

NGOs have the impression that the government's reporting about 'life-long learning' is unilaterally approached. Lifelong learning includes all forms of formal and informal learning that should enable adults to function on the labour market, within their social environment, and to participate in society. NGOs note that in the Netherlands the concept of lifelong learning has been narrowed down to education focused on the labour market.<sup>148</sup> It therefore excludes women who do not work or who no longer work, such as older women.

As requested before, NGOs would like the government to be more specific about the results and at least identify progress. The government doesn't provide information about gender, ethnicity, level of education, social position etc. Women combine paid work with care for children more often than men, as well as informal care to relatives and friends (home-based care) and their own household.<sup>149</sup> This means that women might experience more barriers to use the opportunity of lifelong learning. NGOs believe 'lifelong learning' shouldn't be limited to the labour market; the government should make policy based on age and ethnicity.

*NGOs are interested to know whether the government is prepared to implement a broader focus on its 'lifelong learning' policy and include all forms of formal and informal learning that should enable adults to function on the labour market, within their social environment and to participate in society.*

*NGOs suggest that the Committee requests the government to expand on how to encourage (practical) basic vocational training for women, especially those with no or very little education so to facilitate their entry into the labour market. Perhaps a renewed use of the formula 'vrouwenwvkschool' (practical basic vocational training) in cooperation with existing training institutes focused on the labour market might be useful.*

*In addition, the Committee might want to suggest the government to encourage social partners to ensure that the bipartite 'O&O' funds (for training of workers and unemployed) benefit the women workers, including those who work part-time, and unemployed women.*

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145 Herweijer, 2009, p. 61

146 *Parliamentary Papers II* 2007/08, 30 420, nr. 116. See also: Van der Heijden, 2009, p. 10

147 Emancipatiemonitor 2008, p. 57

148 Raad voor Werk en Inkomen 2008, p. 4

149 Emancipatiemonitor 2008, p. 156

**Less training opportunities for women workers**

Another concern of NGOs is the failure of the government to provide figures it could have on training for workers. Although women have training courses nearly as often as men, they are less often provided with study facilities (f: 39%, m: 48%). Women get less time off for training and their studies are reimbursed less often by the employer (f: 51%, m: 61%). This disadvantage might be associated with the fact that women tend to follow a training course to increase their prospects of finding other work, whereas men engage in training and courses particularly aimed at gaining promotion.<sup>150</sup>

*NGOs suggest that the Committee asks the government to expand gender mainstreaming in its lifelong learning policy.*

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<sup>150</sup> Emancipatiemonitor 2008, p. 75

## Article 12 Right to health care and special measures during pregnancy

### 1. Gender differences in illness, risk factors, treatment and health

The government mentions in its report that since a gender-specific policy does not exist, data and information broken down by ethnic background cannot be provided. Commissioned by the Minister of Emancipation, a chapter on health was included for the first time in 'Emancipation Monitor 2008'.<sup>151</sup> NGOs commend the government for that, and hope that, from now on, this chapter will remain part of the Emancipation Monitor. The chapter on health provides the requested data and shows that this is essential for developing targeted health (care) policies. Since biological, psychological, social, cultural and political factors cause gender and ethnic differences in health and illness, this is important.<sup>152</sup> Research, for example, shows that women suffer more often than men from chronic illnesses, and non-western female immigrants even more so than Dutch women. Women's health problems also are more often a cause of mobility limitations. Within non-western immigrants, these gender differences are twice as high. Women in general live longer than men but are more likely than men to suffer from disabling and degenerative chronic diseases, such as osteoporosis and dementia. These data bring up questions such as how such gender differences can be explained, whether there are possibilities for gender-specific prevention and treatment, and what the relationship is between gender-specific health inequalities and social participation. The government has become aware, in the meantime, of its lack of systematic attention to gender and ethnic differences in health within the different phases of policy-making. The responsible (deputy) minister has announced a quick-scan to determine different policy areas that need improvement with regard to equal right to health care – in other areas than violence against women, Social Support Act, and informal care.<sup>153</sup>

*The NGOs commend the government for including a chapter on health in the 'Emancipation Monitor 2008' and recommend it remains a part of it, since it provides data on health and illness disaggregated by gender, age and ethnicity.*

*The NGOs suggest that the Committee asks the government for an update on the quick-scan that was implemented to determine different policy areas that need improvement with regard to equal right to health care, and how the government will follow up.*

### Increased risk of death for ethnic-minority babies, children and adults

The government answers Q 31 by indicating that several measures are being taken to improve the health of women of migrant origin. However, it doesn't provide information about measures intended to reduce the risk of death of ethnic-minority babies and children. The NGOs, moreover, wonder what measures the government is taking with regard to the increased maternal mortality risk of female asylum seekers (four times higher than native Dutch women). A recent PhD proved that this is directly caused by the government's policies with regard to asylum seekers - since they are not allowed to settle in one centre they have to change doctors and midwives all the time, with the accompanying risks.<sup>154</sup> In the view of the NGOs, this shocking outcome should be addressed without delay.

*The NGOs suggest that the Committee asks the government to provide information about measures intended to reduce the risk of death of ethnic-minority babies and children. The NGOs also urge the Committee to request information about measures the government is taking with regard to increased maternal mortality risk of female asylum seekers.*

### Failure to include women in treatment trials and testing of medicines

In Europe there are medicines on the market which are not or insufficiently tested on women.<sup>155</sup> Apart from children, for elderly people, age might influence the effect of medicine. Research has been conducted on the in- or exclusion of women in treatment trials and testing

<sup>151</sup> Emancipatiemonitor 2008, chapter 9.

<sup>152</sup> Verdonk, 2007

<sup>153</sup> *Parliamentary Papers II* 2007/08, 30 420, nr. 114.

<sup>154</sup> Zwart, 2009

<sup>155</sup> Ruiz Cantero and Angeles Pardo (2006) in Emancipation Monitor 2008, p. 268.

of medicines. It shows that if both men and women are included in treatment trials, they don't provide sex-stratified data or possible adverse-effects data. In the Netherlands, the Medicines Evaluation Board (MEB) assesses and guards the efficacy, safety and quality of both human and veterinary medicinal products.<sup>156</sup>

*The NGOs are interested to know what possible measures the government is taking to reduce the gender bias in treatment trials and testing of medicines.*

## **2. Need for gender sensitive courses in health education and training**

A lot of scientific information is available about gender differences in health and illness, but very little information is incorporated in training curricula for health workers and in medical curricula. Dissemination of gender aspects of health and illness is important to improve the practical treatment of women and men and thereby reduce morbidity and mortality. In the Netherlands, projects have been implemented on integrating gender in, for example, psychology pedagogies, and medical curricula.<sup>157</sup> But the cooperation of people involved in the process, such as deans, staff and curricula coordinators, was on a voluntary basis, and it has been difficult to maintain the changes that have been achieved.<sup>158</sup> The government should put into effect the 24<sup>th</sup> General Recommendation of CEDAW, nr. 31, f, and provide a back-up for educational institutes on health, to ensure comprehensive, mandatory, gender-sensitive courses on women's health and human rights, gender-based violence included.

*The NGOs suggest that the Committee addresses in constructive dialogue the need for gender-sensitive courses in health education and training in the light of the 24<sup>th</sup> General Recommendation nr. 31, f.*

## **3. More gender differences in informal care for elderly and disabled**

The government is right in its answer to Q 16 that no data are kept about informal care providers, let alone disaggregated by sex, ethnicity and age. But that is exactly the point: those data should be collected, because the availability of informal care is one of the cornerstones of the health and welfare policies of the government. The NGOs appreciate, therefore, that the Ministry of Health, Welfare and Sports commissioned an extensive research project on informal carers. The government refers to a summary of that in its answer to Q 16, but does not highlight some other interesting gender differences. More than 60% of informal care-givers are women, the majority of whom are to be found in the age group under 65 (52%). According to the NGOs, the informal care gap of 20% with the male informal carers is not the only relevant gender difference. Men mainly provide informal care to their partners, women to a much wider social network, including children and mothers (in-laws as well). Women are over-represented among the working (58%) as well as the not-working informal carers (71%). It is true that the research did not indicate that women reduce their numbers of working hours because of informal care. But it is also true that part-timers (mainly women) more often provide more substantial informal care (hours as well as duration), compared to full-timers (mainly men). It is not surprising that female informal care-givers more often feel overburdened.

*The NGOs conclude that since gradually a shift towards more informal care seems to be aimed at by the government, it should also find ways to encourage men to provide informal care to a wider social network than their partners. The Committee could ask how.*

### **Household assistance in the Social Support Act**

Since 2007, formal household care has been transferred from the Exceptional Medical Expenses Act/ AWBZ to the Social Support Act, and organized by the local governments. The government reports that 40% of the participants got less hours of care and guidance, and finding solutions depends on coincidence instead of information.<sup>159</sup> The NGOs do not understand why the government denies in the answer to Q 16 that the availability of

<sup>156</sup> See [www.cbg-meb.nl](http://www.cbg-meb.nl), last visited on 18 August 2009

<sup>157</sup> Van Mens-Verhulst en Bekker 2005 and Verdonk 2007.

<sup>158</sup> Emancipatiemonitor 2008, p. 269

<sup>159</sup> DLZ/KZ-U-2936611, 23 June 2009

household assistance from a family network (live-in or nearby) and neighbours plays a role in the assessment. The possibility to complain and appeal is in most cases not a solution, since it concerns disabled and/or ill people, mostly elderly (75+) – the procedures are moreover costly and time- and energy-consuming. It might be that it is not unreasonable to include the availability of informal care networks into accounts in some way or another, but gender biases and bottlenecks should be assessed.

*The NGOs suggest that the Committee requests that, when taking the availability of informal care networks into account, the government should include an assessment as well of possible gender biases in the 2<sup>nd</sup> evaluation expected in 2013 as well as in the 6<sup>th</sup> report.*

### **Government's budget cuts hit elderly women hardest**

The relationship between several health-related insurances (Exceptional Medical Expenses Act - AWBZ, Social Support Act - Wmo, Health Insurance Act - Zorgverzekeringswet) has changed repeatedly over the last couple of years. NGOs regret that the government has failed to mention this in its report, as well as neglecting the results of the gender impact assessment on the effects of these changes. These changes seem to have a disproportionate impact on women, particularly at an older age (and older migrant women in particular).<sup>160</sup> The budget cut of the EMEA/AWBZ impacts in different ways. For example, day- care and meeting projects that provide important support to elderly migrants and prevent social isolation might disappear. Elderly migrant women, in particular, use these facilities. Also, some quite costly aid tools, such as the 'relax chair' (amongst others to be used by people suffering from the gendered disease 'compressed vertebra'), have been removed from health insurance coverage and have to be paid for. These budget cuts are often promoted by pointing to the increased welfare and pension income at old age, but this is not the case for women. Also, as mentioned above, elderly women are more likely to suffer from chronic illnesses.

*The NGOs think that the budget cuts in health care hit the population of elderly women the hardest. Instead of 'creating opportunities to shape their own lives', as the government intends to do, it seems that elderly women are becoming more dependent of their children, if they have any. The NGOs suggest that the Committee addresses this issue during the constructive dialogue.*

### **Assessing gender impacts of changes in the EMEA/AWBZ?**

It is true that the changes have been introduced recently, but more changes will follow in the near future, while no (simple or extensive) prior gender impact assessment has been made. So in the monitoring and evaluation processes explicit attention should be paid to possible gender biases. The NGOs do not understand why this should be limited to women in shelters (as the government suggests in its answer to Q 16). One of the recent changes is that possibilities for a personal budget for children with psychological and psychiatric problems have been almost abolished. Given the fact that mothers almost exclusively provide informal care for children (see above), this measure could have a great impact on their lives. To request an assessment thereof is the least that should be done, in the view of the NGOs.

*The NGOs suggest that the Committee requests a gender impact assessment of (intended) changes in the EMEA/AWBZ.*

## **4. Limited access to health care for undocumented women**

Undocumented female migrants in the Netherlands are likely to experience many health problems due to their problematic, often violent, social situations. Although they are formally entitled to all necessary medical and maternal care, their practical access to health care is problematic.<sup>161</sup> This is partly due to a lack of knowledge about the Dutch healthcare system and lack of continuity of care. Fear makes them avoid contacting healthcare providers. Also, for women victims of trafficking who refuse to cooperate with authorities, not only is legal

<sup>160</sup> Especially from 2011 onwards the total population of 65+ years old will increase tremendously, with half a million between 2008 and 2015. Of the population between 70-80 years in 2008, 55 percent is female and of 90+ years, 78 percent is female. (Emancipatiemonitor 2008, pp. 24-25)

<sup>161</sup> Van den Muijsenbergh 2004

assistance lacking, but access to medical assistance is reduced as well. The closure on 1 January 2009 of the MOA Healthcare Departments at the asylum seekers' centres, through which both curative and preventive healthcare was provided, even worsens the situation. The basic idea is that health services for asylum seekers have to tie in as much as possible with the way in which health care has been organised for Dutch citizens, according to the government. NGOs regret that the government doesn't take the specific situations of undocumented female migrants into account.

*The NGOs urge the Committee to ask whether the government is prepared to undertake specific measures to provide equal access to health care for undocumented female migrants, since research shows this is not yet the case.*

#### **Research into health and healthcare needs of undocumented women**

Too little is known about the health and health care needs of the 25,000-50,000 undocumented women in the Netherlands. The few figures that are available show a relatively high risk of contracting sexually transmitted diseases such as HIV/aids, Chlamydia infections, etc., but more research is needed. NGOs appreciate that, at the moment, a project financed by the Ministry of Social Affairs and Employment is being carried out to get insight into problems related to health and access to health care that undocumented women experience. Results will be available in 2010. Preliminary results – which are alarming enough in the view of the NGOs – show that these women perceive their health to be much worse than other migrant women, who already rate their health bad in comparison with Dutch women. Gynaecological and psychological complaints were very prevalent, but seldom mentioned spontaneously. Obstetric problems were numerous. The abortion rate in this population was 64.9 (the average in the Netherlands is 8,6).<sup>162</sup> Only half of these women were registered at a clinic or GP, a quarter of the pregnant women did not get any prenatal checks. NGOs think these results underline the fact that the government should provide information to undocumented people and (health) professionals on the right to health care and, in particular, the right to health care for children.

*The NGOs urge the Committee to request the government to provide information to undocumented people and (health) professionals on the right to health care and, in particular, the right to health care for children.*

#### **5. Contraceptive pill back in basic health insurance package**

NGOs are positive about the reintroduction of the contraceptive pill in the compulsory health insurance. Unfortunately however, the government has introduced a compulsory 'own risk' of maximum 155 euro (in 2009), costs for GP visits, pregnancy and childbirth excluded. This means that women still have to pay for the contraceptive pill. This might especially affect women with lower incomes and girls. NGOs think it should be more logical that since costs for pregnancy and childbirth are excluded from the compulsory 'own risk' measure, costs to actually prevent pregnancy should be excluded.

*The NGOs are interested to know whether the government is prepared to partly remove the pill from expenses covered by the compulsory own risk, to avoid the risk of unwanted pregnancies.*

#### **Mamma prostheses for transgenders excluded from health insurance**

Since the introduction of new health insurance legislation in 2006, the government explicitly excludes the surgical placement of internal breast implants from the health insurance, unless the placement follows total or partial mastectomy (e.g. women with breast cancer).<sup>163</sup> The government reasons that the treatment is usually not medically necessary, but often of a purely cosmetic nature and wants to prevent improper or non-plausible arguments from patients.<sup>164</sup> This contradicts the medical diagnosis of transsexualism. For most transsexuals the only treatment that can lead to an improvement in their quality of life is to have surgery

<sup>162</sup> Schoevers M, unpublished data from the study: Health and access to healthcare for female undocumented migrants, Radboud University Medical Centre Nijmegen, Department of Primary Care.

<sup>163</sup> CVZ 2007, p. 10.

<sup>164</sup> Idem, p. 15

and hormonal treatment to make the body as congruent as possible with the preferred sex.<sup>165</sup> For male to female transsexuals, this includes having breasts.

*The NGOs suggest that the Committee asks the government if it is prepared to reconsider the explicit exclusion of surgical placement of internal breast implants and put the task of making medical diagnoses back on doctors.*

## **6. Improved access to Morning-after pill**

NGOs are content that the emergency contraceptive pill (or morning-after pill) is now available at drugstores in the Netherlands without prescription. That is an improvement of the access to services related to family planning.

### **Refusal of improvement of access to menstrual regulation**

The NGOs regret the fact that the government is refusing to improve the services with respect to menstrual regulation (an early abortion for women having missed their period for 16 days e.g. 6.5 weeks of pregnancy – 'overtijdbehandeling'). This menstrual regulation has been exempted from the abortion legislation since its introduction in 1984. Since the abortion pill Myfegine became available in the Netherlands in 1999, women can choose: menstrual regulation via curettage (as before 1999) or using medicinal menstrual regulation. From a medical perspective, the latter method is preferable for very early pregnancies. The government, however, is restricting the prescription of Myfegine to abortion clinics and hospitals, denying it to the more easily accessible general practitioners' clinics. Important health federations support GPs in their wish to increase accessibility, which would enhance the woman's right to choose an easily accessible menstrual regulation.

*The NGOs suggest that the Committee asks the government why it is refusing to improve access to family planning services by menstrual regulation.*

### **Menstrual regulation now under Pregnancy Termination Act?**

As explained above, menstrual regulation has been exempted from the abortion legislation since its introduction in 1984. Judgments of the Supreme Court and the Council of State have confirmed this, based partly on the explanation in parliamentary proceedings.<sup>166</sup> The duration of the 16 days or of 6.5 weeks of pregnancy more or less coincides with the earliest moment heart-action of the foetus can be established (though often a few days later), which is the only proof of a successful pregnancy. The same period applies to the establishment of a successful pregnancy after IVF (In Vitro Fertilisation). This is another reason to exempt menstrual regulation from abortion legislation.

The Coalition Agreement contained an intention to bring menstrual regulation under the Pregnancy Termination Act. The compulsory period to rethink the decision for an abortion of 5 days after the first contact with a doctor would not be applicable, because of the short term (within 16 days after the missed period). Despite the rulings of the Supreme Court and the Council of State, the government recently announced a plan to do this without changing the law. The NGOs do not consider this correct and think it is in violation of the law. Moreover, NGOs think this is also in violation of the Convention as interpreted by the Committee's General Recommendation 24, key elements 11 and 14.<sup>167</sup>

*The NGOs think that the government's intention to bring menstrual regulation under the Pregnancy Termination Act is in violation of the Convention as interpreted by the Committee's General Recommendation 24, key elements 11 and 14. The NGOs suggest that the Committee asks how the government is implementing General Recommendation 24, considering this intention.*

<sup>165</sup> See for example: Smith et al. 2005, pp. 89-99

<sup>166</sup> See Kleiverda, Swaab & Gomperts, 2009

<sup>167</sup> It is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women. And 14, the obligation to /respect rights/ requires States parties to refrain from obstructing action taken by women in pursuit of their health goals.

## 7. More research on health of lesbian and bisexual women needed

For the first time in the Netherlands, online research on the psychosocial health of lesbian and bisexual women in the Netherlands and on stigma has been conducted.<sup>168</sup> It shows that lesbian and bisexual women report more psychosocial health problems than their heterosexual peers, and that these problems are related to stigmatizing events they experience. Based on these results, the government acknowledges the importance of increasing the visibility, empowerment and social acceptance of lesbian and bisexual women in the Netherlands.<sup>169</sup> However, the results are not fully representative, due to the low financial resources available, which limited the number of respondents. This coincides with the invisibility of lesbian and bisexual women, both in public spaces and in research, which makes it difficult to identify specific issues, such as health, lifestyle, identity and age, on which research is needed. To cut through this vicious circle, NGOs suggest that the government should provide possibilities for further research. NGOs think this might be possible by including sexual orientation in relation to gender in large population studies, and providing more funds for larger- scale quantitative and in-depth studies. More quantitative data is needed on which appropriate policies can be developed.

*The NGOs are interested to know whether the government intends to provide (financial) possibilities for further (large scale) quantitative and in-depth research on specific issues of lesbian and bisexual women, to be able to develop appropriate policies to improve their health and increase the social acceptance of LBT.*

*The NGOs suggest that the government should encourage large population studies that include sexual orientation in relation to gender.*

## Sterilization requirement of transgenders reviewed

Since 1985, sterilization is compulsory for a person who wants to have his or her sex changed in his or her birth certificate. This requirement violates several CEDAW articles, including article 12 which reads 'state parties should not permit forms of coercion, such as non-consensual sterilization'.<sup>170</sup> NGOs commend the government for announcing review of this sterilization requirement following the recommendation of the Commissioner for Human Rights of the Council of Europe.<sup>171</sup> The government will present its revised bill for consultation in late 2009.

*The NGOs suggest that the Committee asks for an update on the revised bill concerning the sterilization requirement for transgenders.*

## 8. 100% Drugs Control at Airport: Pregnant Women locked in

In order to repress drug trafficking via Schiphol national airport, for a number of destinations a body scan is mandatory for every passenger (so-called '100% control'). Pregnant women who are suspected of drug trafficking and who cannot undergo a body scan because of the risks of radiation are locked in until they have proven their innocence by producing clean faeces three times. A complaint is pending with the National Ombudsman, submitted by a pregnant Dutch nurse of Surinamese origin who was innocently kept detained at Schiphol for five days.<sup>172</sup> The Dutch Government refuses to provide the possibility of an echo to pregnant women as an alternative: this would cost too much time and capacity.<sup>173</sup>

*The NGOs suggest that the Committee urges the government to provide pregnant women who are 'suspected' of drug trafficking at the 100% drugs control at Schiphol airport with an echo as an alternative to a body scan.*

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168 Ehrhardt & Bos 2009.

169 *Parliamentary Papers II* 2008/09 attachment (Aanhangsel) nr. 267, p. 5621.

170 General Recommendation 24, article 12, key element 22.

171 Commissioner for Human Rights 2009 (b), Recommendation nr. 4

172 Report nr. 2006/001 via [www.ombudsman.nl](http://www.ombudsman.nl)

173 See *Parliamentary Papers II* 2007/08, Aanhangsel no. 2275: Answers to Questions by MPs Van Bommel en De Wit 19th May 2008

## 9. Better policies required for women living with HIV/aids

The government provides a short paragraph on HIV/aids, unfortunately without referring to its information sources. NGOs think that actual problems are hidden behind this global information. Neither specific information nor measures taken in regard to the identified at-risk group are provided. The government reports that 871 people were diagnosed as HIV-positive in 2006, of which 166 infections were diagnosed in women.<sup>174</sup> Most of these women are of non-Dutch origin, as the government already indicated, whereas most HIV infected men originate from the Netherlands. 73% of the men had acquired the infection through sex with men. Heterosexual contact is by far the most important risk factor amongst women (95%).<sup>175</sup> Many resources for prevention and treatment are aimed at the large group of Dutch men who are (at risk of) living with HIV because of homosexual contact. NGOs suggest that preventive measures and treatment should be developed for women as well.

The government indicates that, in principle, everyone in the Netherlands has access to HIV treatment. However, this is hardly the case for the very disadvantaged group of asylum seekers who are HIV infected.<sup>176</sup> Basic necessities like 'bed, bread and bath' are unavailable for the ones whose (first) appeal for a residence status has been rejected.<sup>177</sup> Medical care is in theory accessible, but since the Dutch policy is aimed at sending people without a residence permit back to their home country, many people in this group are too scared to apply for medical support. In some cases, HIV-infected undocumented women are allowed to stay in the Netherlands until their CD4 count is stable and it is safe to return to the country of origin. However the safety of returning to the country of origin is only measured by the availability of HIV-medications and not its accessibility or affordability.

The government doesn't provide figures about mother to child transmission as mentioned in general recommendation 24. In 2006, two new cases were reported, which brings the total number to 147. In the HIV screening of pregnant women, the majority of infections were in women of non-Dutch origin.<sup>178</sup> Since all these facts and figures are available through the HIV Monitoring Foundation, NGOs do not understand why the government does not include this information.

*The NGOs urge the Committee to ask the following questions during the constructive dialogue: how does the government intend to improve its policies targeted at women living with HIV, as follows from GR 24, 31 (b)? Is the government prepared to reconsider the measurement of 'safety' of HIV-infected undocumented women for returning to the country of origin, and include accessibility and affordability of HIV-medications? Based on all facts and figures available, is the government prepared to provide more in-depth information about HIV/aids in its next report to CEDAW?*

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174 Van Veen et. al, 2007, p. 49

175 Table number of HIV cases diagnosed in 2006, by transmission risk group and region of origin, HIV Monitoring Foundation, 2007

176 Shiripinda & Van Eerdewijk 2008

177 Picavet, 2006

178 Van Veen et al, 2007 p. 68.

## Article 13 Elimination of discrimination against women in other areas

### 1. No information about (micro)credit and access to bank loans

The 5<sup>th</sup> report limits itself to one element of art. 13 c (sports). NGOs think it should have been more comprehensive. Art. 13 b addresses the right to bank loans and other forms of financial credit. The government could have reported about the microfinance-project of the Ministry of Economic Affairs (2008-2010) as microfinance credit schemes in other countries often enhance the position of women. All information the NGOs could find however is 'gender-neutral'.<sup>179</sup>

In general, access to bank loans and other forms of financial credit for women has improved over the last decade, but it is still nearly impossible for women to acquire a bank loan for starting a sex-related entertainment business. The lifting of the ban on brothels in 2002 has not improved this situation.

*The NGOs suggest that the Committee requests that the government include gender perspectives in the evaluation due in 2010/11, providing data regarding the amounts loaned and success disaggregated by gender, ethnicity and age.*

*The NGOs also would like to know whether women could obtain a loan via the microfinance-project for starting a brothel or another form of sex-entertainment.*

### 2. Limited approach of recreational activities and sports

The NGOs wonder why the government considers the increase in girls' soccer of such importance that it justifies the place it receives in the report (p. 88 / p.160-161 in CEDAW/C/NLD/5), without any reference to developments with regard to the membership of boys. Boys' soccer membership also increased during these years. To assume there is a trend towards the disappearance of traditional women's and men's sports seems a bit too optimistic when the Royal Netherlands Football Association has a female membership of less than 10% in 2008.<sup>180</sup>

In general, the emphasis on sport in clubs or sporting associations limits the report.

*NGOs think the government should pay in the next report more attention to recreational activities like walking, cycling, swimming, music etc. Another thing the NGOs would like to know is whether the governments' funding of sports at all levels benefits women (and girls) on equal footing with men (and boys). A gender budget analysis could provide useful insights. The Committee might raise this with the government in constructive dialogue.*

#### Is 'Time for sport' a good example of gender mainstreaming in reality?

In the previous shadow report, the NGOs commended the government on the programme 'Time for sport, participation of ethnic minority youth by sport': in the planning phase it seemed to be a good example of gender mainstreaming.

*The NGOs had hoped that the 5<sup>th</sup> report would provide mid-term results of the project 'Time for sport' (disaggregated by gender and ethnicity), instead of mere reference to 'the considerable investments' the government is making. The Committee might ask to be informed about the outcome.*

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<sup>179</sup> [http://ez.nl/onderwerpen/ruimte\\_voor\\_ondernemers/microkredieten](http://ez.nl/onderwerpen/ruimte_voor_ondernemers/microkredieten), last visit 10 September 2009  
<sup>180</sup> KNVB 2007/08 p. 53

## Article 14 Ensuring full participation of women in rural areas

### 1. No policy development with respect to women in rural areas

The chapter lacks a comprehensive overview of the efforts and achievements of the government with respect to the development of women in rural areas. Though the 5<sup>th</sup> government report presents some such information, NGOs think important figures are missing. Of the nearly 1.8 million women (15-65 years old) in the rural areas, some one million belong to the labour force.<sup>181</sup> Female labour market participation is slightly lower (by 3%) than in urban areas, but male labour market participation in rural areas is slightly higher than in urban areas (by 3%). The average number of hours of employment of men is higher than in urban areas and that of women lower. Unemployment of both men and women is slightly less compared to the urban areas, but the differences between men and women are bigger. The same picture arises from the figures about economic independence.

*The NGOs think that these differences between women and men ought to justify intensified policy development by authorities in rural areas, but that seems lacking at all levels.*

#### **Address bigger differences between women and men in rural areas?**

It is true that 53 per cent of the 'farmers wives' has the status of 'head of the business', but in most cases this is a joint husband-wife partnership, which is more profitable from tax-perspective. The report fails to mention that one out of five of these 'head of the business' also has a job elsewhere, often because an additional income was necessary. No figures about income of the farmers, broken down by sex, are presented.

The 5<sup>th</sup> report states that, compared to the non-urbanised areas, the situation of women in the slightly urbanised areas has improved, but does not explain what is causing this improvement. Was it the result of governmental efforts or was it an autonomous development? The NGOs think it was the last.

The report fails to recognise that, since both categories have been combined in the figures, the situation of women in non-urbanised areas is even bleaker. NGOs can find no support for the conclusion that differences between rural and urban areas are becoming increasingly smaller. Future restrictions on allowances for home-based childcare (see chapter Art. 4/11) will probably have a stronger effect in the rural areas, both with respect to the availability (and the use) of childcare and with respect to employment in the sector (predominantly women).

*The NGOs suggest that the Committee asks the government how it intends to address the bigger differences between women and men in rural areas.*

### 2. Results of projects and incentive measures apparently not available

The government report continues with the description of some projects by NGOs and interest groups supported by the Ministry of Agriculture, Nature and Food Quality. No information is provided about the results of these projects. The statement that, in the studies financed by the ministry, "attention is given to gender issues" disguises the fact that there is no guarantee that, where women are disadvantaged, appropriate measures will be taken. One of the new studies stated clearly "Women do experience more difficulties in the rural areas than men."<sup>182</sup> Is the government willing to relieve those difficulties?

*The NGOs suggest that the Committee requests a comprehensive summary of the outcomes and conclusions, with respect to gender issues, of the studies and programmes mentioned in the 5<sup>th</sup> report as well as information on measures government is taking to address the difficulties of women in rural areas.*

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181 Emancipatiemonitor 2006 pp. 262-285.

182 Vermey & Mollenhorst 2008, p. 63

### **3. Transport difficulties of elderly women in rural areas leading to isolation**

The government report refers to the increased car-mobility that supposedly contributed to the improvement in the living standards of women in rural areas. The NGOs do not contest that in itself, but point at the risk of social isolation on the part of elderly women in the rural areas. Research has shown that women stop bicycling at an earlier age than men (partly because of the gendered illness osteoporosis). It also shows that elderly women less often possess a driving-license (and indeed a car). In urban areas women can shift to public transport, but in rural areas availability of public transport has been reduced because of increased car usage. Provincial authorities responsible for the invitation for tenders for public transport do not seem very gender-sensitive.

This problem is aggravated by the fact that non-urban areas face a declining and ageing population and declining availability of services and shops. Local government is obliged to offer compensation for transport-facilities for disabled persons below a certain income level, but not daring to cycle at a certain age and not having a driving-license is often not considered a valid indication for this compensation.

*The NGOs wonder whether the government is prepared to take appropriate measures to prevent isolation of elderly women in rural areas.*

## List of Recommendations

### Part 1 - General remarks

#### 1. Dutch government Reporting

- ✓ *NGOs believe the Committee would have appreciated the overall report of the Emancipation Review Commission (VCE) as an appendix because of the large overlap in concerns between the Commission and the CEDAW Committee. The NGOs suggest that the Committee ask the government why it limits itself to providing information on measures and intentions rather than results, and why it did not provide a translation of the overall VCE report.*
- ✓ *The NGOs suggest that the Committee asks the government for clarification: did it change its conceptual approach on the implementation of the Convention and if so, why?*
- ✓ *NGOs suggest the Committee asks the government why no attention is being paid, for example in the report, to the General Recommendations.*
- ✓ *A related question could be why the government does not report about specific groups like women with disabilities, the girl child and elderly women.*
- ✓ *Once again, NGOs suggest that the Committee stresses during constructive dialogue the importance of collecting disaggregated data to gender and ethnicity, and the relevance of monitoring its policy impact.*
- ✓ *The Committee might wish clarification about the government's interpretation of its obligations under the Convention.*

#### 2. Policies Promoting Gender Equality and Gender Mainstreaming

- ✓ *The NGOs suggest the Committee requests a detailed overview of the recommendations of the Emancipation Review Commission and the government's policy view, per ministry.*
- ✓ *The NGOs suggest the Committee asks whether the government will endorse a dialogue between relevant governmental agencies, NGOs and academics about gender mainstreaming domestic violence policies.*
- ✓ *The NGOs suggest the Committee asks the government why it decided not to engage into a consultation process, as would be logical in implementing the Beijing Platform for Action.*
- ✓ *The NGOs urge the Committee to engage with the government in a discussion of its obligations under CEDAW and the tasks of the coordinating minister for gender equality.*
- ✓ *The NGOs wonder whether the government also envisages an independent assessment at mid-term or later. They suggest the Committee asks the government. In constructive dialogue, the government can hopefully explain how it is implementing General Recommendation 6, more specifically with respect to effective national machinery with adequate resources, commitment and authority "to advise on the impact on women of all government policies".*
- ✓ *The NGOs suggest the Committee invites the government to comment on the evaluation of the successes and failures of gender budget analysis and gender impact assessments as instruments.*
- ✓ *The NGOs do not share the optimistic view of the government about transferability and follow-up of the 163 projects subsidised under the subsidy-scheme, and suggest the Committee again raise the issue of core funding for women's rights organisations and civil society.*
- ✓ *The NGOs suggest the Committee asks the government why it is silent about this regrettable loss of women's vocational training.*

#### 3. Discrepancies in the Dutch government's policies at home and abroad

- ✓ *The NGOs notice discrepancies in the government's foreign policies vis-à-vis domestic policies. They are worried about the inconsistencies and ask the Committee to address these with the government.*
- ✓ *The NGOs suggest the Committee addresses the apparent double standards applied by different ministries regarding the role of women's rights organisations in constructive dialogue with the government.*

- ✓ *NGOs are interested to know how the government applies the Yogyakarta Principles in its own country. Did it discuss a work programme with appropriate LGBT NGOs at home? Why was the government not willing to change its sterilisation requirement for transgenders, despite NGOs urgings, until the Commissioner for Human Rights of the Council of Europe recommended doing so (see Chapter Art. 12). Is the government willing to discuss this with the Committee?*
- ✓ *The NGOs suggest that the Committee enquires why the government does not implement several of the critical areas of concern of the Beijing Platform at home, including improving the position of the Girl Child and combating incest. "The significant synergy between the substantive content of the Convention and the Beijing Platform for Action" (CEDAW reporting guidelines I 1.1) seems lacking in the Netherlands – the Committee might also wish to address this in constructive dialogue.*
- ✓ *The Committee could ask the government's views: is its first responsibility really with the women confronting (sexual) violence elsewhere in the world? Why not put the same effort into adequate national policies for combating violence against women?*

#### **4. Status of CEDAW**

- ✓ *The Dutch NGOs remain concerned about the government's view with respect to the status of the Convention in the domestic legal order, including the status of the CEDAW-Committee, its views regarding communications under the Optional Protocol and its concluding observations.*
- ✓ *The NGOs urge the Committee to ask the Dutch government why it instructed the state solicitor to hold that the Convention has no direct effect and why the state solicitor quoted CEDAW Communication No.3/2004 selectively.*
- ✓ *The NGOs urge the Committee to ask the government whether it is willing to make a legal provision requesting full explanations when the judiciary disagrees with the view of the CEDAW-Committee.*
- ✓ *The NGOs wonder whether an obligation for judges to justify the (non) applicability of international legislation could help. The Committee could ask the government's view about this.*
- ✓ *The NGOs suggest the Committee asks the government to justify its lack of reference to the Convention in legislation and in correspondence with Parliament.*
- ✓ *The NGOs suggest the Committee requests the government to clarify its position regarding General Recommendations of CEDAW.*
- ✓ *The NGOs suggest the Committee addresses the possibility of once more promoting the Convention via in-depth assessments in conjunction with the next item.*
- ✓ *The NGOs regret that the Dutch government has abandoned its daring and unique strategy of inviting independent critical observations about its implementation of the CEDAW-Convention. They urge the Committee to request the rehabilitation of the national reports and in-depth assessments, or at least one of those.*

## **Part 2 – Comments per article of the Convention**

### **Art. 1 & 2 – Elimination of all discrimination against women**

#### **1. Violence against women**

- ✓ *NGOs urge the Committee to encourage the government to develop a consistent and tailored policy to combat gendered violence against women from different backgrounds based on facts and figures, not on unfounded assumptions of prevailing practices within minority communities.*
- ✓ *NGOs suggest the Committee asks what the government's standpoint is on the expert research into gender related violence, and what the outcomes are of the large-scale project on domestic violence.*
- ✓ *NGOs are interested to know if the government is willing to incorporate into the legislation allowing temporary restraining orders, not only that the perpetrator of domestic violence, but also that those remaining in the house (the victim(s)) are entitled to free legal advice in all relevant areas of law.*
- ✓ *NGOs suggest the Committee asks whether the government agrees that reduction of elder abuse F/M is a top priority, and what measures it has developed to prevent and combat this.*

- ✓ NGOs suggest the Committee asks the government for an update on the promised policy paper about sexual health, including the prevention of sexual violence.
- ✓ NGOs urge the Committee to request the government to provide facts and figures on residence permits provided to victims of domestic violence on humanitarian grounds.
- ✓ NGOs urge the Committee to request facts and figures on both the prevalence of honour-related violence, and on residence permits provided to victims of honour-related violence on humanitarian grounds.
- ✓ NGOs suggest the Committee asks the government how it intends to go further in preventing Female Genital Mutilation.

## **2. Sexual harassment less prominent in legislation**

- ✓ The NGOs regret that sexual harassment is now less comprehensively handled in the legislation. They suggest the Committee ask the government how it assesses developments since 2004, and whether it is monitoring the effects of the new Labour Conditions Act and the change of the Equal Treatment Act.
- ✓ A second question could be whether the government is prepared to adapt the legislation to include a better definition.
- ✓ A third question could address the government's efforts to prevent and combat sexual harassment in education, sports and centres for asylum-seekers etc.
- ✓ A fourth question could concern the results of the information campaign (answer to Q 7) and whether an up to date evaluation had taken place or is foreseen in the near future.

## **3. Enforcement of prevention of discrimination by Labour Inspectorate**

- ✓ The NGOs suggest the Committee asks the government about the way in which the Labour Inspectorate implements this new responsibility regarding discrimination (budget, training, relation with other duties, reporting).
- ✓ The government could be requested to include sex-segregated data and other information about monitoring and enforcement by the Labour Inspectorate with respect to discrimination and sexual harassment in the 6<sup>th</sup> report.

## **4. No motivation by Supreme Court disregarding Equal Treatment Commission**

- ✓ The NGOs think it is time now for the government to acknowledge it was too optimistic in assuming that the judiciary acts in conformity with an implicit constitutional requirement to explicitly justify why an opinion of the Equal Treatment Commission is disregarded. Therefore NGOs urge the Committee to inquire whether the government is now prepared to include such an obligation in legislation.
- ✓ The NGOs hope that constructive dialogue with the Committee will lead to a greater sense of urgency within the government, and to the acknowledgment that Dutch equal treatment legislation should soon be brought in line with international obligations.
- ✓ The NGOs suggest the Committee requests clarification about the adequacy of the funding of the new anti-discrimination architecture. The Committee could, moreover, encourage the government to involve NGOs with expertise in women's discrimination next time, to ensure that a subject like pregnancy-discrimination is not again overlooked.
- ✓ The NGOs suggest the Committee asks the government whether it is willing to include gender identity in the General Equal Treatment Act (AWGB).
- ✓ The NGOs urge the Committee to require guarantees from the government that it will not curtail the budget of the Equal Treatment Commission or that of human rights NGO, in the process of establishing the National Human Rights Institute.

## **5. No concrete measures by the government to reduce the salary gap M/F**

- ✓ NGOs suggest the Committee asks for information about concrete results in reducing the male-female salary gap. Is the government monitoring collective agreements with respect to the use of the instruments and other activities to address pay discrimination and/or diminish the gender remuneration gap? Can the government present facts and figures, disaggregated by sex and ethnicity, in the next report?
- ✓ The NGOs point at recent comparative European data that suggest an even higher gender pay gap in the Netherlands than the Labour Inspectorate reports: the Netherlands is among the countries in which the gender pay gap is the widest. That ought to justify an equal pay campaign in which the NGOs are fully prepared to participate. The NGOs hope

*that the Committee is willing to convince the government of the necessity for an equal pay campaign, especially in the light of the very limited exposure of Equal Pay Day.*

- ✓ *The NGOs suggest the Committee asks for an assessment of the results (with disaggregated data) of the equal pay enforcement by the Labour Inspectorate in the 6<sup>th</sup> government report.*
- ✓ *The NGOs suggest the Committee asks the government why it has not so far used the unique opportunity caused by the credit crunch to address the gendered remuneration discrepancies in the financial sector and whether the government is prepared to do so.*
- ✓ *The NGOs are interested to know how the government intends to tackle the real risk that equal pay policies are evaporating with the economic crisis: how does the government intend to prioritise the bridging of the equal pay gap by the social partners in sectors and companies? Could it be a possibility to create covenants with the social partners?*

#### **6. Changes in social security legislation indirectly discriminatory**

- ✓ *NGOs note that social security is not addressed at all in the 5<sup>th</sup> report. The NGOs think this is a major shortcoming of the report, which the Committee could address during constructive dialogue.*
- ✓ *The NGOs suggest the Committee asks for clarification: did indeed more women than men lose part or all of their disability benefit. If so, can the government explain how it thinks this could be in compliance with the Convention?*
- ✓ *The NGOs hope the Committee can convince the government of the need for research into the deeper causes of the gender differences under the new (WGA/WIA) Invalidity Law.*
- ✓ *The NGOs conclude that enough evidence exists to request accounts about the effects of the unemployment legislation with disaggregated data. The Committee could, moreover, request inclusion of social security issues in the next government reports.*
- ✓ *The CEDAW-obligation to achieve substantive equality obliges, in the view of the NGOs, gender impact assessments (GIA) to be carried out ex-ante as well as ex-post. Such a GIA on disability benefits for handicapped young persons (Wajong) should entail, amongst others, the way maternity (-leave) and consequences of motherhood are taken into account. The NGOs suggest the Committee invites the government to explain its view about the gender differences in the Wajong and the appropriate measures it will take.*
- ✓ *The NGOs suggest the Committee requests monitoring of the effects of the changes in the Work and Welfare Act, with data disaggregated by gender and ethnicity in compliance with CEDAW-obligations, in the 6<sup>th</sup> report.*

#### **7. Gender equality in Foreign Policies**

- ✓ *The NGOs suggest the Committee asks the government to reveal its views and efforts with respect to the sustainability and continuity of the MDG3Fund. Is the government planning to raise this issue (formally or informally) during the 54<sup>th</sup> session of the CSW at which the conclusions of the 52<sup>nd</sup> CSW (Financing for gender equality and the empowerment of women), will be evaluated?*
- ✓ *The NGOs are interested to know whether the government is willing to add an assessment of gender in the format of the newly-revised funding regulation for Dutch development NGOs.*
- ✓ *Could the government reassure the Committee and NGOs that the gender mainstreaming performance in sectors, programmes and budget lines has improved considerably since 2007?*
- ✓ *The NGOs suggest the Committee addresses the issue of benchmarks, resources and incorporation of gender perspectives in the National Action Plan 1325 during constructive dialogue.*
- ✓ *The NGOs are interested to know how the government will fulfil its promise to enhance the policy-focus on gender equality and women's empowerment through all the different aid channels at its disposal in the context of its reduced budget for development cooperation?*

## **Art. 3 Ensuring the full development and advancement of women**

### **1. No information about developments regarding women's income**

- ✓ *The NGOs urge that the Committee asks the government to include a comprehensive disaggregated overview of the income of women in its 6<sup>th</sup> report.*
- ✓ *The NGOs suggest the Committee requests that the government reports on the number of women in different age groups and ethnicities earning (at least) an income of 70-80% of the net minimum wage from wages or entrepreneurial income as well as via social security benefits, (pre-)pension-schemes etc. These figures should be included in the research about economic independence and in the 6<sup>th</sup> report as in addition to general information about developments in the individual income of women.*

### **2. Women, especially single mothers, overrepresented amongst working poor**

- ✓ *The NGOs think the government should develop gender-sensitive policies in improving perspectives of the working poor F/M and suggest the Committee addresses this issue in constructive dialogue.*
- ✓ *The Dutch government is keen on promoting the Decent Work Agenda of the ILO in other countries, but, in the view of the NGOs, it should prioritise this Agenda in the Netherlands itself as well– this might be an interesting subject for the Committee.*
- ✓ *The NGOs take the view that the government's slack approach, disadvantaging single mothers in social assistance and their (18+) children, is in contradiction with article 3 and article 5b of the Convention. The Committee could consider asking the government for an explanation.*

### **3. Can the Part-timePlus Taskforce reinforce women's legal position?**

- ✓ *The NGOs think that the government is putting too much emphasis on cultural issues and on the assumption that women ought to acquire 'a more positive self-image' and pays too little attention to developments in the labour market itself. Knowing that the Committee has expressed its interest in involuntary part-time work by women in previous constructive dialogues with the government, the NGOs would encourage the continuation of the dialogue in this respect: is the government using the best instruments to ensure the full development and advancement of women? If the objectives of the Taskforce are not accomplished at the end of the two year term (as is likely), what follow-up is the government envisaging?*

### **4. Effect of tax measures overestimated**

- ✓ *The NGOs would like to pose the question: are tax measures the best instruments to ensure the full development and advancement of women?*
- ✓ *The NGOs would suggest that the Committee asks the government for clarification: how will the gradual abolishment of the individual tax credit allowance improve the position of women who remain unemployed or ill.*

### **5. Unsatisfactory answer to request about women living in poverty**

- ✓ *The NGOs would like to know how the government assesses the poverty-consequences of measures, including those already embedded in legislation – like the abolition of the statutory survivors benefit (ANW) for survivors (born > 1949) without children under 18 – and the abolition of the spouse benefit in the statutory state pension (AOW) in 2015. The development of the number of men and women without a full statutory state pension is relevant as well. The NGOs suggest that the Committee requests more specific information about developments regarding income, and more specifically about poverty, in the 6<sup>th</sup> report.*

### **6. No measures to address higher female unemployment**

- ✓ *The NGOs do not criticise the temporary measures to prevent unemployment in the present economic crisis in itself (though they are very costly) but point at a sharp contrast with the absence of any additional efforts to address female unemployment. The NGOs suggest that the Committee discusses prioritisation of combating female unemployment with the government.*
- ✓ *The NGOs conclude from the unemployment figures as well as the reduced opportunities for women with an unemployment benefit to become re-employed that the reintegration*

market does not cater enough for women. It is regrettable that most of the specialised knowledge of women's vocational training ('vrouwenvakscholing'), successfully targeted at lower-educated women of both Dutch and non-Dutch origin, was lost in the decentralisation process. In abolishing the subsidy for this, the previous Minister for Emancipation is to blame.

- ✓ The NGOs suggest the CEDAW Committee asks the government how it intends to improve the reintegration market for women. Could it be an idea to include a quota provision guaranteeing unemployed women places according to their percentage among the unemployed population, as was very successful in Germany?

#### **7. Mixed feelings about policies regarding women of migrant origin**

- ✓ Knowing that the Committee is keen on the situation of women of migrant origin, the NGOs suggest addressing the ambiguity of the government's policies in this respect (e.g. reinforcing stereotypes but also leaving possibilities for policy interventions unused) in constructive dialogue.
- ✓ The NGOs think that adaptation of the instrument of Recognition of Acquired Competencies (EVC) to the situation of refugee women, almost always highly educated, can enhance their chances on the labour market. They suggest that the Committee asks the government its views on this, at the same time requiring disaggregated data about the outcome of the Job Offensive for Refugees (p. 42 / p. 81 in CEDAW/C/NLD/5).

#### **8. Diminished social protection of domestic workers and homecare workers**

- ✓ In the opinion of NGOs the exceptions Dutch social law makes for domestic workers are not in accordance with the CEDAW. The NGOs would be interested to learn the opinion of the Committee as to whether the 'Services at home Scheme' constitutes a violation of the Convention (Art. 1, 2 and 11).

#### **9. Childminders next category of workers with disguised employment relation?**

- ✓ The NGOs consider it worrying that another category of predominantly women workers, childminders, has to work under a disguised employment relationship and would like to know how the government assesses compliance with the Convention.

#### **10. More women in top positions?**

- ✓ NGOs think that the government might reconsider its standpoint about using quotas and other measures to increase the proportion of women in higher positions in (academic) institutions (further in the chapters art. 4 and art. 7 & 8).

### **Art. 5 Addressing the stereotyped roles for men and women?**

- ✓ The NGOs urge the Committee to elaborate about the obligations following article 5 at the constructive dialogue.

#### **1. Is the government addressing men's stereotyped role effectively?**

- ✓ The NGOs suggest that the Committee asks the government why it dropped the concrete target of 40 per cent share in care tasks of the previous policy plans for gender equality, and how it understands article 5 of the Convention.
- ✓ The NGOs suggest that the Committee asks the government to spell out its policy response to 'Plan of the Man', and how it intends to change its stereotyped approach to care obligations.

#### **2. Is the government effectively addressing women's stereotyped role?**

- ✓ The NGOs hope that the Committee can convince the government it should put more efforts into addressing stereotypes to meet its obligations under article 5.

#### **3. Promotion of diversity hand in hand with combating stereotypes**

- ✓ The NGOs suggest that the Committee addresses the subject of promoting diversity as a strategy in addressing stereotypes during constructive dialogue.

**4. Government and politicians reinforce stereotypes in immigration debate**

- ✓ *The NGOs suggest that the Committee asks the government for facts and figures that would confirm the government's view of 'incompetent import-brides'.*

**5. 'Breaking through the glass wall' continued?**

- ✓ *The NGOs suggest that the Committee asks the government to elaborate during the constructive dialogue on the ESF-Equal Project 'The Glass Wall' and what follow-up it intends.*

**6. Talent to the Top Charter – promising real progress or window-dressing?**

- ✓ *The NGOs are interested to know whether, according to the government, the Talent to the Top Charter is promising real progress or has turned out to be window-dressing?*

**7. Integrating gender in teacher training more important than increasing number of male teachers**

- ✓ *The NGOs think the government would be more successful in combating and eliminating stereotyped roles for men and women and changing socio-cultural behaviour patterns in the field of education if it focused on the integration of gender in teacher training. The NGOs suggest that the Committee addresses this need for anchoring gender awareness training during the constructive dialogue.*

**Art. 6 Combating trafficking in women and forced prostitution**

**1. Criminal approach barrier to protection of trafficking victims**

- ✓ *NGOs would like to know if the government is willing to provide access to assistance & protection for victims of trafficking who are not able or willing to cooperate with the criminal justice system.*
- ✓ *NGOs are interested to know if, as suggested in its answer to Q 27, the government is willing to amend the Aliens Act to enable all victims of trafficking to apply for a residence permit on humanitarian grounds, independent of their (previous) cooperation with the criminal justice system and the temporary residence permit granted then.*
- ✓ *The NGOs are interested to learn if the government is indeed willing to formally recognise the role of NGOs in the identification of victims of trafficking and what steps it intends to take to implement this.*
- ✓ *NGOs would like to know if the government is willing to apply the regular B9-procedure to victims in aliens' detention, i.e. to entitle them to a reflection period on the slightest indication that they might be a victim of trafficking.*
- ✓ *NGOs suggest that the Committee asks the government to reconsider the role of NGOs in the taskforce or at least explain how the input of the bi-annual consultation relates to decisions of the Task Force.*
- ✓ *NGOs would like to suggest that the Committee urges the government to provide a detailed response to the 5<sup>th</sup> and 6<sup>th</sup> reports of the National Rapporteur and to further implement their recommendations.*

**2. Criminalisation of unregistered prostitutes does not improve their position**

- ✓ *NGOs are interested to learn what makes the government believe that mandatory registration of prostitutes and the criminalisation of unregistered prostitutes and their clients will improve the position of prostitutes. They would also like to know if, under the new Bill, cities will be obliged to repeal city planning ordinances that prohibit prostitutes to work at home.*
- ✓ *Given the serious concerns of both NGOs and sex workers about the possible negative impacts of the proposed measures on prostitutes, the NGOs would like to know if the government is willing to carry out a Gender Impact Assessment before introducing the proposed measures. They also want to know what measures the government proposes to secure the rights of prostitutes and to include their voice in the development and implementation of prostitution policies.*
- ✓ *NGOs are interested to learn if the government is willing to spend at least the same amount of money on empowerment activities for sex workers as on exit programmes.*

**3. Trafficking and exploitation in other sectors than the sex industry**

- ✓ *NGOs suggest that the Committee asks the government why it has not yet implemented the recommendation to define 'labour exploitation'.*

**Art. 7 Equal participation in political and social life &**

**Art. 8 Equal representation at the international level**

**Still a long way to go?**

- ✓ *The NGOs suggest that the Committee asks the government how it implements General Recommendation 23.*

**1. Equal representation of women in political and social life no longer an aim**

- ✓ *The NGOs suggest that the Committee asks the government why it dropped the targets to achieve equal representation in the politically elected bodies and whether it is considering extra measures.*

**2. Lasting stagnation in political participation at local level**

- ✓ *The NGOs suggest that the Committee asks the government's view about its approach vis-a-vis the recent research, and about other strategies to raise the participation of women in local politics.*
- ✓ *The NGOs suggest that the Committee asks the government for an explanation of the low number of female Queens Commissioners.*

**3. Ensuring women's participation in the formulation of government policy?**

- ✓ *NGOs would like to know how the Committee evaluates the lack of influence of women in the light of article 7, para (b): the State's obligation to ensure women to participate in the formulation of government policy? Could the Committee discuss how to develop more effective ways to present women's interests and perspectives in constructive dialogue with the government?*

**4. No convincing answer to Q 25 - refusal to use quota for political positions**

- ✓ *The NGOs suggest that the Committee addresses the unsatisfactory attitude of the government towards quotas and other temporary measures at the constructive dialogue.*

**5. Could changes in electoral system achieve equal participation of women?**

- ✓ *The NGOs suggest that the Committee discusses with the government whether it is willing to commission an in-depth researching to Article 7 of the Convention, and possibilities for changes in the electoral system.*

**6. Poor information about representation at the international level**

- ✓ *The Committee could request the government to provide more information about figures related to women's representation in high-ranking international positions, as well as policies to increase the numbers in its next report.*

**Art. 9 Equal rights of obtaining, changing or retaining a nationality**

**Art. 16 Equal rights in respect of marriage and family relationships**

**1. Gender-Based Discrimination in the Law on Names**

- ✓ *NGOs suggest that the Committee asks for an update on the progress of the working group that reviews the law on surnames and the government's standpoint on this.*

**2. Tightening rules on family reunification disproportionately affects women**

- ✓ *The NGOs doubt whether the current family migration policy of the Netherlands complies with its international obligations under CEDAW article 16 and would appreciate knowing the Committee's opinion on this matter.*
- ✓ *NGOs suggest that the Committee asks whether the government is prepared to provide residence permits to both children and partners on an equal basis: for the length of the knowledge migrant's employment contract.*

**3. Time limit for family reunification refugees violates article 16**

- ✓ *NGOs urge the Committee to ask the government why it does not change its stringent policy on family reunification, which appears to violate international Conventions.*

**4. Increased dependency of residence permit affects women more than men**

- ✓ *NGOs suggest that the Committee requests the government to provide the most recent figures or data on the number of women who were granted refugee status on grounds of domestic violence.*
- ✓ *NGOs suggest that the Committee requests the government to grant pregnant women screened HIV positive with a permanent residence permit and HIV-treatment.*

**5. Plan for parenthood limits access to divorce proceedings**

- ✓ *NGOs suggest that the Committee asks the government about the effects of the new law that requires a joint plan for parenthood before applying for a divorce; both in theory as in practice, for women in general, and for victims of domestic violence in particular, and requests the government to provide this information in the 6<sup>th</sup> report.*

**6. 'Love exiles' same-sex couples welcome in the Netherlands**

- ✓ *NGOs suggest that the Committee commends the government for recognizing article 16 to be applicable to same-sex couples.*
- ✓ *NGOs also suggest that the Committee commends the government for acknowledging persecution based on sexual orientation or gender identity as a ground for qualification for residence permits. The Committee could request the government to take up its leading position on LGBT human rights to solve existing problems for LGBT asylum seekers caused by the Dublin protocol.*

**7. More priority for non-legal measures in combating forced marriages**

- ✓ *NGOs urge the Committee to request the government to shift focus towards non-legal measures that prevent and combat forced marriages instead of further restricting family formation and family reunification.*

**8. No general pardon for wives of so called '1F' asylum seekers?**

- ✓ *The NGOs would like to suggest that the Committee raises this issue with the government: how many women and children do not qualify for the general pardon because they crossed the Dutch border for medical or other serious reasons? Can the government explain, in the light of the requirements of the Convention, why a more lenient approach cannot be considered?*

**Art. 10 Equal right to education**

**1. Many activities to diversify educational opportunities but results unknown**

- ✓ *NGOs would like to know how the government is monitoring and evaluating implementation and results of the activities, both qualitatively and quantitatively.*
- ✓ *NGOs would like to stress again that the government should disaggregate the figures regarding education by gender, ethnicity and educational level - where necessary and feasible - to make the dynamics of these different groups visible and to be able to develop targeted policies.*
- ✓ *Therefore NGOs are interested to learn how the education innovations actually influence gender segregation, and what measures the government intends to take related to the outcome of the Parliamentary research to diminish gender segregation.*
- ✓ *NGOs suggest that the Committee asks the government to provide the necessary funding to keep important activities, such as a website, a network of more than 40 local Technika 10-organisations and the organization of Girls day.*
- ✓ *NGOs suggest that the Committee asks the government for a view on the causes of this decrease and what measures it will take to improve students' performance in mathematics, especially that of girls (of migrant origin).*

**2. Educational streaming at an early age limits inflow of girls into science studies**

- ✓ *NGOs are interested to learn what the government's reasons are for failing to postpone the age at which students choose their study-profiles and what alternative measures are*

*taken to ensure equal access to all curricula.*

- ✓ *NGOs suggest that the Committee asks what the government finds important and what it intends to do with the outcomes of the Sardes report, instead of just referring to appendix 10.*

### **3. Obstacles for women to 'lifelong learning'**

- ✓ *NGOs are interested to know whether the government is prepared to implement a broader focus on its 'lifelong learning' policy and include all forms of formal and informal learning that should enable adults to function on the labour market, within their social environment and to participate in society.*
- ✓ *NGOs suggest that the Committee requests the government to expand on how to encourage (practical) basic vocational training for women, especially those with no or very little education so to facilitate their entry into the labour market. Perhaps a renewed use of the formula 'vrouwenvakschool' (practical basic vocational training) in cooperation with existing training institutes focused on the labour market might be useful.*
- ✓ *In addition, the Committee might want to suggest the government to encourage social partners to ensure that the bipartite 'O&O' funds (for training of workers and unemployed) benefit the women workers, including those who work part-time, and unemployed women.*
- ✓ *NGOs suggest that the Committee asks the government to expand gender mainstreaming in its lifelong learning policy.*

## **Art. 12 Right to health care and special measures during pregnancy**

### **1. Gender differences in illness, risk factors, treatment and health**

- ✓ *The NGOs commend the government for including a chapter on health in the 'Emancipation Monitor 2008' and recommend it remains a part of it, since it provides data on health and illness disaggregated by gender, age and ethnicity.*
- ✓ *The NGOs suggest that the Committee asks the government for an update on the quick-scan that was implemented to determine different policy areas that need improvement with regard to equal right to health care, and how the government will follow up.*
- ✓ *The NGOs suggest that the Committee asks the government to provide information about measures intended to reduce the risk of death of ethnic-minority babies and children. The NGOs also urge the Committee to request information about measures the government is taking with regard to increased maternal mortality risk of female asylum seekers.*
- ✓ *The NGOs are interested to know what possible measures the government is taking to reduce the gender bias in treatment trials and testing of medicines.*

### **2. Need for gender sensitive courses in health education and training**

- ✓ *The NGOs suggest that the Committee addresses in constructive dialogue the need for gender-sensitive courses in health education and training in the light of the 24<sup>th</sup> General Recommendation nr. 31, f.*

### **3. More gender differences in informal care for elderly and disabled**

- ✓ *The NGOs conclude that since gradually a shift towards more informal care seems to be aimed at by the government, it should also find ways to encourage men to provide informal care to a wider social network than their partners. The Committee could ask how.*
- ✓ *The NGOs suggest that the Committee requests that, when taking the availability of informal care networks into account, the government should include an assessment as well of possible gender biases in the 2<sup>nd</sup> evaluation expected in 2013 as well as in the 6<sup>th</sup> report.*
- ✓ *The NGOs think that the budget cuts in health care hit the population of elderly women the hardest. Instead of 'creating opportunities to shape their own lives', as the government intends to do, it seems that elderly women are becoming more dependent of their children, if they have any. The NGOs suggest that the Committee addresses this issue during the constructive dialogue.*

**4. Limited access to health care for undocumented women**

- ✓ *The NGOs urge the Committee to ask whether the government is prepared to undertake specific measures to provide equal access to health care for undocumented female migrants, since research shows this is not yet the case.*
- ✓ *The NGOs urge the Committee to request the government to provide information to undocumented people and (health) professionals on the right to health care and, in particular, the right to health care for children.*

**5. Contraceptive pill back in basic health insurance package**

- ✓ *The NGOs are interested to know whether the government is prepared to partly remove the pill from expenses covered by the compulsory own risk, to avoid the risk of unwanted pregnancies.*
- ✓ *The NGOs suggest that the Committee asks the government if it is prepared to reconsider the explicit exclusion of surgical placement of internal breast implants and put the task of making medical diagnoses back on doctors.*

**6. Improved access to Morning-after pill**

- ✓ *The NGOs suggest that the Committee asks the government why it is refusing to improve access to family planning services by menstrual regulation.*
- ✓ *The NGOs think that the government's intention to bring menstrual regulation under the Pregnancy Termination Act is in violation of the Convention as interpreted by the Committee's General Recommendation 24, key elements 11 and 14. The NGOs suggest that the Committee asks how the government is implementing General Recommendation 24, considering this intention.*

**7. More research on health of lesbian and bisexual women needed**

- ✓ *The NGOs are interested to know whether the government intends to provide (financial) possibilities for further (large scale) quantitative and in-depth research on specific issues of lesbian and bisexual women, to be able to develop appropriate policies to improve their health and increase the social acceptance of LBT.*
- ✓ *The NGOs suggest that the government should encourage large population studies that include sexual orientation in relation to gender.*
- ✓ *The NGOs suggest that the Committee asks for an update on the revised bill concerning the sterilization requirement for transgenders.*

**8. 100% Drugs Control at Airport: Pregnant Women locked in**

- ✓ *The NGOs suggest that the Committee urges the government to provide pregnant women who are 'suspected' of drug trafficking at the 100% drugs control at Amsterdam airport with an echo as an alternative to a body scan.*

**9. Better policies required for women living with HIV/aids**

- ✓ *The NGOs urge the Committee to ask the following questions during the constructive dialogue: how does the government intend to improve its policies targeted at women living with HIV, as follows from GR 24, 31 (b)? Is the government prepared to reconsider the measurement of 'safety' of HIV-infected undocumented women for returning to the country of origin, and include accessibility and affordability of HIV-medications? Based on all facts and figures available, is the government prepared to provide more in-depth information about HIV/aids in its next report to CEDAW?*

**Art. 13 Elimination of discrimination against women in other areas**

**1. No information about (micro)credit and access to bank loans**

- ✓ *The NGOs suggest that the Committee requests that the government include gender perspectives in the evaluation due in 2010/11, providing data regarding the amounts loaned and success disaggregated by gender, ethnicity and age.*
- ✓ *The NGOs also would like to know whether women could obtain a loan via the microfinance-project for starting a brothel or another form of sex-entertainment.*

**2. Limited approach of recreational activities and sports**

- ✓ *NGOs think the government should pay in the next report more attention to recreational activities like walking, cycling, swimming, music etc. Another thing the NGOs would like to know is whether the governments' funding of sports at all levels benefits women (and girls) on equal footing with men (and boys). A gender budget analysis could provide useful insights. The Committee might raise this with the government in constructive dialogue.*

**Art. 14 Ensuring full participation of women in rural areas**

**1. No policy development with respect to women in rural areas**

- ✓ *The NGOs think that these differences between women and men ought to justify intensified policy development by authorities in rural areas, but that seems lacking at all levels.*
- ✓ *The NGOs suggest that the Committee asks the government how it intends to address the bigger differences between women and men in rural areas.*

**2. Results of projects and incentive measures apparently not available**

- ✓ *The NGOs suggest that the Committee requests a comprehensive summary of the outcomes and conclusions, with respect to gender issues, of the studies and programmes mentioned in the 5<sup>th</sup> report as well as information on measures government is taking to address the difficulties of women in rural areas.*

**3. Transport difficulties of elderly women in rural areas leading to isolation**

- ✓ *The NGOs wonder whether the government is prepared to take appropriate measures to prevent isolation of elderly women in rural areas.*

## Acronyms

1F:	article 1F of the Geneva Convention
ACVZ:	Adviescommissie voor Vreemdelingenzaken; Dutch Advisory Board on Immigration Affairs
AOW:	Algemene ouderdomswet; statutory old age pension
AWBZ:	Algemene Wet Bijzondere Ziektekosten; Exceptional Medical Expenses Act (EMEA)
AWGB:	Algemene Wet Gelijke Behandeling; General Equal Treatment Act
CEDAW:	Convention on the Elimination of All Forms of Discrimination against Women
Cito:	Centraal Instituut voor Toetsontwikkeling; National Institute for Educational Measurement
EC:	European Commission
ECOSOC:	United Nations Economic and Social Council
ESF:	European Social Fund
ETA:	Equal Treatment Act
ETC:	Equal Treatment Commission (Dutch: Commissie Gelijke Behandeling, CGB)
EVC:	Erkenning van Verworven Competenties; Recognition of Acquired Competencies
EU:	European Union
FGM:	Female Genital Mutilation
FTE:	fulltime-equivalent
GIA:	Gender Impact Assessment (Dutch: Emancipatie Effect Rapportage)
Havo:	hoger algemeen voortgezet onderwijs; senior general secondary education
HBO:	hoger beroepsonderwijs; professional vocational education
ILO:	International Labour Organization
IVF:	In Vitro Fertilization
LBT:	Lesbian and Bisexual women and Transgenders
LGBT:	Lesbian, Gay, Bisexual and Transgender people
MDG3:	Millennium Development Goal 3
MEB:	Medicines Evaluation Board
MVV:	Machtiging Voorlopig Verblijf; Provisional Residence Permit
NAP 1325:	National Action Plan 1325
OECD-DAC:	Organization for Economic Co-operation and Development-Development Assistance Committee
PI:	Parliamentary Inquiry
SCR 1820:	Security Council Resolution 1820
UNECE:	United Nations Economic Commission for Europe
UWV:	Uitvoeringsinstituut Werknemersverzekeringen; Employee Insurance Schemes Implementing Body
Vc:	Vreemdelingencirculaire; Aliens Act Implementation Guidelines
VCE:	Visitatie Commissie Emancipatie; Emancipation Review Commission
VVR:	Verblijfsvergunning regulier; residence permit
Vwo:	voorbereidend wetenschappelijk onderwijs; pre-university education
Wajong:	Wet arbeidsongeschiktheidvoorziening jonggehandicapten; Disablement Assistance Act for Handicapped Young Persons
WAO:	Wet Arbeidsongeschiktheidverzekering; Invalidity Insurance Act
Wav:	Wet Arbeid Vreemdelingen; Migrant Labour Employment Act
WGB M/V:	Wet Gelijke Behandeling M/V; Equal Treatment Act M/F
WIA:	Wet werk en inkomen naar arbeidsvermogen; (new) Invalidity Insurance Act
Wib:	Wet inburgering buitenland; Civic Integration Act (Abroad)
Wmo:	Wet maatschappelijke ondersteuning; Social Support Act
WW:	Werkloosheidswet; Unemployment Benefit Act
WWB:	Wet Werk en Bijstand; Work and Welfare Act

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**Aim for human rights, Aletta - instituut voor vrouwengeschiedenis** (Aletta institute for women's history), **E-Quality** (Knowledge centre for gender, family and diversity issues), **FNV** (Netherlands Trade Union Confederation FNV), **Justitia et Pax, Movisie** (Netherlands Centre for Social Development), **Stichting Emancipatie Online, Studien Informatiecentrum Mensenrechten Universiteit van Utrecht** (The Netherlands Institute of Human Rights), **Tiye-International** (Platform of 21 national associations of black, migrant and refugee women and youth in the Netherlands), **Vereniging voor Vrouw en Recht Clara Wichmann** (Association Women and Law Clara Wichmann), **Vluchtelingenorganisaties Nederland** (Refugee Organisations Netherlands)  
...and several independent experts.