

COMMENTARY ON THE SECOND AND THIRD PERIODIC REPORT OF THE NETHERLANDS ON THE IMPLEMENTATION OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

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Dutch Section of the International Commission of Jurists

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1. Introduction

The present commentary contains the comments of the NJCM (*Nederlands Juristen Comité voor de Mensenrechten*), the Dutch section of the International Commission of Jurists on the second and third periodic report of the Netherlands, submitted in accordance with Article 18 of the Convention on the Elimination of all forms of Discrimination Against Women (November 1998 and August 2000).

The Netherlands' reports referred to in this commentary, are 'The second report of the Netherlands to the UN Committee for the Elimination of all forms of Discrimination Against Women (CEDAW)' of November 1998, as published by the Netherlands Ministry of Social Affairs and Employment in 1999; and the Dutch version of the 'Third Report of the Netherlands to the UN, August 2000. The NJCM regrets the fact that it did not receive the official English version of the third report in time. Unless mentioned otherwise, the page numbers mentioned in this commentary refer to these editions of the Netherlands governmental reports.

This commentary consists of two main parts. The first part (Chapter 2) contains general remarks concerning the Netherlands reports and the implementation of CEDAW in the Netherlands. The second part (Chapter 3) provides a more detailed examination of the contents of the reports on an article-by-article basis. In this commentary the Netherlands' reports will be followed meaning that not every provision in the Convention will be dealt with separately. Finally, an executive summary and a list of questions and recommendations concludes this commentary.

The NJCM finished its commentary on the second Dutch report in December 1999. After publication of the third governmental report, comments on this third report were added to the text of the NJCM commentary of December 1999, wherever relevant. Comments on the third report are marked by a separate heading and indented margins.

The commentary is limited to the Netherlands. The situation in the Netherlands Antilles and Aruba is not dealt with. The NJCM stresses furthermore that this commentary does not in any way claim to be complete. In order to enhance the effectiveness of this 'shadow report', it was decided to highlight the most urgent concerns and most remarkable developments.

The NJCM feels that the distinction in three sub-goals of the Convention - as proposed by the national committee of independent experts- is helpful in discovering the implications of the Convention. The NJCM is pleased that the Netherlands Government decided to adopt this approach in its second and third report to the Committee. However, the NJCM is concerned about the way in which the Government has put this approach to practice (see page 5 of this Commentary).

Finally, the NJCM supports also the comments submitted to CEDAW by the Dutch expert centre E-quality¹, which has been submitted on behalf of Dutch women's organisations.

¹ For more on E-quality, see page 115 of the second Netherlands report.

2. General Remarks

National and International Reporting Procedures (Article 18, General Recommendation No. 1)

The Netherlands Government states that its second periodic report to CEDAW was delayed, due to the national reporting procedure to Parliament (pages 3 and 110). The NJCM would like to know what the reasons were to start the national procedure only in 1996 (page 4), since the first national report should have been submitted already in 1995.

As the Netherlands Government itself points out, the second periodic report has been submitted two years late. Undeniably, the national procedure preceding the periodic report (as explained on pages 3, 4 and 110) has been extensive and time consuming, but that does not alter the fact that the Government has been slow in starting the procedure in the first place. The first national report should have been presented to Parliament in 1995, but the committee of independent experts that prepared this first report (the *Groenman Report*),² was installed only in July 1996 (page 4). This is to be regretted even more, because the Government has seen it fit to bring the reports to CEDAW back on schedule, by skipping the second national reporting procedure.³ This is surprising given the importance the Government itself attaches to the national procedure (pages 4 and 110). The NJCM sincerely hopes that the Government will at least keep its repeated promise (pages 3 and 110) to submit the third (and subsequent) report(s) to CEDAW in time.

Equality Principle

(Last preambular paragraph, Articles 1-3, Article 5, General Recommendation No. 6)

The Netherlands Government states its firm commitment to fully implement the Convention (pages 5 and 110). The NJCM would like to know how it is to be explained that other interests are regularly given priority over the sex-equality principle as contained in the Convention, even at the ‘first level’ of direct discrimination?

The Netherlands Government has time and again expressed its intention to achieve an ‘emancipated society to which people can contribute regardless of their sex [...]’ (page 5). Notwithstanding undeniable progress in this area, several developments in the reporting period raise the question whether the Government is really aware what fully implementing the Convention entails. The principle of equality of men and women is set aside quite regularly for reasons including - but not limited to - ‘compelling’ financial interests. Instances of biased (proposals for) legislation and policies have occurred at all three levels (pages 4-6) in the reporting period.

² L.S. Groenman *et al.*, The Women’s Convention in the Netherlands in 1997. Report of the committee on the implementation in the Netherlands of the Convention on the Elimination of All Forms of Discrimination Against Women, VUGA, The Hague, 1997 (*Het Vrouwenverdrag in Nederland anno 1997. Verslag van de commissie voor de eerste rapportage over de implementatie in Nederland van het Internationaal Verdrag tegen Discriminatie van Vrouwen*).

³ In the ‘Note on emancipation policy for the year 2000’, accompanying the Government Budget of 21 September 1999 (Begrotingsbrief Emancipatiebeleid 2000), the second national report is scheduled for 2002. This implies that one national reporting period is dropped from the agenda. In the original planning, the second national report should have been presented to Parliament in 1999.

Examples relevant to the first level - equality before the law and in public life - (pages 4 and 7) include the recently changed law of names (pages 102-103; page 27 of this commentary), the decision to hold on to the principle of heredity of peerage exclusively via male descent⁴, and the fact that in the Netherlands political parties are still allowed to exclude women from membership and thus also the possibility to represent the party in Parliament⁵ (page 14 of this commentary). Generally, at this level, the lack of a comprehensive procedure to check on possible infringements of the Convention prior to the entering into force of legislation and/or policies, is a cause for concern.

An example relevant to the second level - improvement of the position of women - (pages 4 and 7-8) is the continuing emphasis on the importance of being engaged in remunerated employment, as opposed to the undertaking of (unpaid) caring activities. The policies to encourage women's employment, listed in chapter 9 (pages 78-89), illustrate that the main focus is still on 'integration of women'. Women are stimulated (if not forced by measures in the sphere of social security)⁶ to adapt to the male world and male standards, without sufficient flanking measures to resolve the problems caused by their labour market recruitment. Another example is the New Surviving Dependants Act (page 75) which is presented as a step towards more equality between men and women, but which has in practice led to a change for the worse in the position of (in particular elderly) widows (See for more in this context, paragraph 3.7 of this commentary, 'Parental Leave).

An example relevant to the third level - combating dominant gender-based ideology - (pages 4 and 89) is closely linked to the gender-biased emphasis on the importance of remunerated employment pointed out above. According to the NJCM, a genuinely 'emancipated labour market', *i.e.* an employment market that is equally accessible for men and women alike, would require a radical structural change. In particular at this level, one might expect the Government to focus on the biased emphasis on (paid) labour as opposed to (unpaid) care. The measures discussed here are largely limited to issues of time management (the Daily Routine Commission, pages 90-92) and stereotyped ideas of working women (pages 92-93). Although important in themselves, these measures can hardly be considered an effective instrument to eliminate the structural under-valuation of care as opposed to paid work. Another example, less fundamental but maybe more telling, may be found in the 'core document'⁷ which consistently speaks of 'he', except with regard to equality issues, thus confirming traditional views that it concerns men, unless indicated otherwise.

The above raises doubts whether the Netherlands Government is fully implementing the Convention, and Article 5 in particular. The aforementioned examples contravene the picture

⁴ The Government is of the opinion that heredity of noble titles exclusively via male family members cannot be regarded as sex-discrimination, because these titles have no legal consequences. Therefore, this would fall outside the scope of the Convention. The second argument not to bring this legislation in accordance with the equality principle, is that this would detract from the historical character of the nobility (see Second Chamber, session 1996-1997, 25 039, No. 1, page 2). See also the *Groenman Report, supra* note 2, page 54.

⁵ Other examples of legislative proposals inconsistent with CEDAW, submitted (but not adopted) in the reporting period, are the proposal to stop free prescription of the contraceptive pill, the proposal to withhold free medical care from pregnant women residing in the Netherlands illegally (see also paragraph 3.5 of this commentary), and the proposal to legally acknowledge acts of repudiation.

⁶ As in the proposal of the Deputy Minister of Emancipation Policy, which would oblige single mothers with children under 5 years of age to work (see also page 22 of this commentary).

⁷ UN Doc. HRI/CORE/1/Add.66, *Core document forming part of the reports of states parties*, 26 February 1996.

presented throughout the report, of the importance the Government attaches to the Convention and the achievement of its goals (pages 5 and 110 among others). These concerns are augmented by the gender-neutral way in which the Government has re-formulated the three levels. Notwithstanding the necessity to mainstream, the NJCM fears that such a strong focus on gender-neutrality runs the risk of making the specific problems with which women are still confronted invisible. The statement of the Government that 'the disadvantaged position of women is therefore no longer the central element of this policy' (page 8) seems to confirm this. The Government's reference to a 'monitoring instrument' hardly seems a sufficiently strong instrument to counter these developments (page 109).

Additional remarks on the third report

The third report confirms the concern, already pointed out in the NJCM's remarks on the second report (above), as to the neutral interpretation of sex-equality. According to the NJCM such a very formal and symmetrical approach contravenes CEDAW, which is explicitly aimed at the improvement of the position of *women*. Particularly worrying is the 'translation' of the three sub-aims of the Convention, as distinguished by the Groenman Commission (page 2) into apparently gender neutral categories. 'Equality before the law' has been changed into 'Legislation'. 'Improvement of the position of women' has been changed into 'Diversity' (second report), and again into 'Implementation' (third report). Furthermore 'Combating dominant gender ideology' has been transformed into 'Strategy for cultural change (second report), and later into 'Cultural change' (third report). A concrete example of the result of this gender-neutral approach, to be found in the third report, is the reference to the Gender Impact Analysis (EER) on the new tax system, which is explained as a check on any adverse impact of the new system on women *or men*. Other examples are: the information provided on policies to combat violence (pages 21-24), and on the (unknown) number of women *and men* working in the sex-sector (pages 27).

Judiciary

(Article 2(c), General Recommendation No. 6)

The NJCM would like to know why the - allegedly successful - programme to better acquaint the judiciary with the implications and obligations under CEDAW (for member states) has not been continued? (page 109)

So far, the Convention has received little attention in the Dutch courts. In the few proceedings where provisions of the Convention were invoked, the courts have spent remarkably few words denying the direct applicability of the Convention.

As indicated in the Netherlands report (page 109), one workshop on the Convention for members of the judiciary has been organised in 1997. The NJCM fails to understand why there has been no sequel to this successful and important initiative. It is to be hoped and expected that the Optional Protocol to the Convention will put the issue back on the agenda of the courts.

National Machinery and Emancipation Support Policy

(General Recommendation No. 6)

The NJCM is wondering whether the Netherlands Government will evaluate its new policy with regard to the organisation and support of the Dutch emancipation program?

Has the Government developed a comprehensive plan to ensure specific attention for gender issues within mainstream areas?

Achieving the aims and purposes of the Convention requires an effective structure, both within and outside the Government. The Netherlands Government clearly recognises this (pages 16-21). Notwithstanding this recognition and the continuing support for the work of non-governmental organisations (NGOs), some developments give rise to concern. In the last few years, the emphasis has been on concentration and innovation. The focus on concentration has led to the, more or less, imposed merger of several (subsidised) women's organisations (pages 18, 20 and 115), and consequently a decrease in the total number of organisations involved in this area. Although it is too early for an assessment of the consequences of this change in policy, the whole process has been extremely time and energy consuming to the detriment of other activities. The NJCM would like to see that the effects of this change in policy will be evaluated as a whole in a few years. However and that an unfavourable assessment of the policy will not lead to decisions to break up the structure as such, or to a reduction of subsidies.

One of the criteria to receive a subsidy, or grant (page 19), is that project proposals should preferably be innovative. This emphasis on innovation is to some extent linked to the above mentioned tendency to shift attention from 'women's issues' to more general issues as 'diversity' and 'cultural change' (page 8). This development seems an indication of the Government's faith in the ability of mainstream structures to realise changes for women by using mainstream structures which used to create structural disadvantages for women. The NJCM does not share this belief.

Additional remarks on the third report

Implementation (Article 2)

The third report mentions much research that has been undertaken or will be undertaken, but in many areas implementation policies are lacking. Moreover, in several instances the results of the research undertaken are not explained, nor are follow-up plans outlined. The NJCM would like to know whether follow-ups have merely been omitted from the report or whether they are so far non-existent.

In many chapters the information presented remains very vague and imprecise. For example in Chapter 5, on Articles 7 and 8, the figures are not segregated as to the level of work. The Ministry of Defense presents no figures whatsoever. This whole paragraph contains only statements, no comments. Also, in many instances problems are described, without making clear what will be done about the problem. (For instance page 40 - 'It is remarkable', page 56 - 'A matter of concern', page 59 - techno monitoring results, page 60 - results of GIA study financing policy).

Although in some areas concrete measures to implement CEDAW are mentioned, in many others the Government merely mentions its intentions to undertake research. (Compare also the NJCM's comment on the information provided in the second governmental report on chapter 3 (page 7 of this commentary).)

3. The Provisions of the Convention

3.1 Article 3 (second report) / Article 1 (third report) **Human Rights and Fundamental Freedoms: Violence Against Women**

The NJCM would like to commend the Netherlands Government for endorsing the wide definition of the term ‘violence against women’ including physical, sexual and psychological violence, as stipulated in, *inter alia*, General Recommendation No. 19 and the Beijing Platform for Action (page 23).

Additional remarks on the third report

Human rights policy (Article 3)

The NJCM suggests that CEDAW invites the Dutch government to explain its views on a gender sensitive human rights policy in accordance with Article 3.

The NJCM welcomes the view of the Netherlands’ Government that sex-related violence constitutes a form of discrimination against women, and therefore should be dealt with under Article 1. However, the fact that Article 3 is no longer separately dealt with in the third report seems to indicate that the Government incorrectly assumes that Article 3 relates exclusively to violence against women. As a consequence, no attention is paid to the more general, and highly important issue of a human rights policy within the context of sex-discrimination.

Persistence of Violence Against Women (Article 3, General Recommendation No. 19)

The NJCM would like to know what concrete measures the Netherlands Government intends to undertake in order to ensure that measures to combat violence against women are incorporated firmly into legislation and policy.

In particular, the NJCM would like to express its distinct disappointment at the lack of any results and consequences of policy in the Netherlands report. It would like to ask the Netherlands Government to indicate the concrete results of the various policies and reports, and present an assessment of their effectiveness.

In its report, the Netherlands Government elaborates on the ‘present position’ regarding violence against women, acknowledging that it ‘occurs on a substantial scale’ and that the ‘great majority of the women who seek refuge in homes for battered women have suffered sexual violence’, almost half of them being from immigrant backgrounds (page 23). It wishes to ‘ensure that measures [to combat violence against women] are incorporated more firmly into legislation and policy designed to safeguard the human rights of women’. However, the Netherlands Government fails to make clear what measures it intends to undertake to achieve this goal, besides supporting the optional protocol to the Convention establishing a complaints procedure. In particular in the light of paragraph 13(b) of the reporting guidelines of the Committee, stating that Governments should report on ‘actual progress made’, the NJCM is of the opinion that the Government should be more concrete in this respect.

Coherent Policy

(Article 3, General Recommendation No. 19)

The policy and legislative measures regarding sexual violence do not seem to be part of a wider, more coherent and comprehensive vision on how to combat violence against women. The NJCM would like to know whether the Netherlands Government has developed an encompassing framework in this respect, and if not, if it intends to do so.

The NJCM would also like to know what has happened so far with the ‘interdepartmental plan of action to prevent and combat violence against women’ which was already drafted in January 1998.

An encompassing policy on combating and preventing violence against women seems to be missing, and the NJCM would like to ask CEDAW to raise this issue and ask the Dutch Government for clarification. For example, the Netherlands Government elaborates on several (project) evaluations that have taken place in recent years. The evaluation of the ‘policy on combating sexual violence in 1991-1995’, which took place in 1995, is mentioned on page 25. The conclusions are quite distressful: there is a ‘considerable gap’ between potential demand of help and the amount of help available⁸; help is insufficiently accessible to certain categories of victims; relevant vocational training courses do not pay sufficient attention to sexual violence; and a ‘more coherent policy on [the] subject [of sexual violence] will certainly be necessary’ (page 26). The NJCM is disappointed that, in reaction to the results of this evaluation which shows that a more coherent policy is necessary, only the Ministry of Health, Welfare and Sport, is forwarding its comments. According to the NJCM, this is clearly a matter which needs to be taken up by the Co-ordinating Minister for Emancipation Policy.

The NCJM would also like to know what has happened with the ‘interdepartmental plan of action to prevent and combat violence against women’ that the Netherlands Government has mentioned (page 24). Since its publication in January 1998, apparently no further action has been taken or policy has been developed.

Legislative Measures

(Article 2, Article 3, General Recommendation No. 19)

The gender-neutral formulation of all legislative measures with regard to violence, indicated by the Netherlands Government in its report (pages 24-25), is cause for concern (see also page 4 of this commentary), in particular because mechanisms to generate specific attention for the problems of women are lacking. The NJCM would like to know what advantages this gender-neutral approach has according to the Government, and how the Government intends to guarantee specific protection of women.

The NJCM would also like to know what criteria have been used, in this context of violence against women, to distinguish measures of ‘level 2’ from those of ‘level 3’.

The Netherlands Government specifies a few legislative measures in its report (pages 24-25). The measures concerned relate to rape within marriage, child pornography, the position of victims in criminal proceedings and sexual harassment in the workplace. All measures mentioned

⁸ This is all the more clear in the case of the homes for battered women (*blijf-van-mijn-lif-huizen*).

are formulated in a gender-neutral way, concerning ‘children’, ‘victims’ and ‘employees’. For example, the ‘Safe schools’ policy document only relates to ‘children’ and does not deal with the specific problems of girls, while the Netherlands Government is required to report on that under the Convention. Explicit reference to the specific problems of women is lacking. The NJCM is worried about this development, which seems to ignore the specific problems of violence against women. Since CEDAW has identified violence against women as a form of discrimination against women (General Recommendation No. 19, paragraph 7), the NJCM would like to ask CEDAW to comment upon this development.

Another question that arises, is which criteria have been used to distinguish measures of ‘level 2’ from measures of ‘level 3’. For example, sexual harassment in schools has been placed by the Netherlands Government under ‘level 2’ (‘Towards diversity’; pages 26-27) and sexual harassment in sport under ‘level 3’ (‘Strategy for cultural change’; page 32). It is unclear why these are placed under these different levels.

(See for more on sexual violence, paragraph 3.8 of this commentary on Article 12, ‘Sexual Violence’).

3.2 Article 6 Trafficking in Women

Victims of Trafficking in Women (Article 6)

If a victim of trafficking in women decides to report the offence, a residence permit is granted for the duration of the investigation, prosecution and trial. What happens with the victim after the criminal procedures have ended?

Why does the Aliens Circular not contain a special policy regarding the particular situation of victims of trafficking in women, similar to, for instance, the specific policy in the Aliens Circular regarding the situation of divorced or abandoned women?

During the sessions in Parliament regarding the issue of trafficking in women, it was stressed that the interest of the victim should prevail in combating trafficking in women. In Chapter B17 of the Aliens Circular, however, the interest of the State prevails. The Dutch policy regarding the combat against trafficking in women is directed at promoting investigation and prosecution, which makes it of great importance that victims of trafficking in women report offences. Therefore, expulsion of victims may be suspended for three months, to give the victim time to decide whether or not she wishes to report the offence. A residence permit is granted if the victim decides to report the offence, and is valid for the duration of the investigation, prosecution and trial. What, however, about the interest of the victim herself, after the criminal procedures have ended? Chapter B17 does not contain any special provisions regarding this situation and therefore does not regard the particular situation these women are in. However, chapter B1/2.4 of the Aliens Circular contains special provisions regarding the situation of divorced or abandoned women, whereby - in considering the request for a prolongation of a residence permit - the position of these women in these country of origin and the support for the women in the country of origin is taken into account. This is even more cogent in case of victims of trafficking in women, who will often be stigmatised in their country of origin. They may even be persecuted by their national authorities, since in some countries prostitution is forbidden. Furthermore, the reporting of trafficking in women increases the risk of reprisals.

According to the NJCM, it is necessary to include specific provisions in Chapter B17 regarding the grounds on which a residence permit can be granted after the criminal procedure has ended. There is a possibility of granting the victim a permit based on humanitarian grounds. However, this possibility is not clearly specified and not even mentioned in the Chapter B17. Moreover, according to the Foundation against Trafficking in Women (*Stichting tegen Vrouwenhandel*), it is only granted in exceptional cases.

Additional remarks on the third report

The NJCM would like to know if the Dutch government keeps statistics as to the number of victims of trafficking granted a residence permit on humanitarian grounds before and after the introduction of the new criteria in the Interim Message Aliens Circular (see below), so that it will be possible to evaluate the effects.

On the 1st of October 2000 a new Interim Message Aliens Circular concerning victims of trafficking in human beings (*Tussentijds Bericht Vreemdelingencirculaire*, TBV 2000/21) entered into force, which replaces Chapter B17 of the Aliens Circular. In this Interim Message Aliens Circular the interest of the government still prevails over the interest of the victim: access to support services, social benefits and a (temporary) residence permit is still fully dependent on the criminal case and whether or not the victim is willing and able to act as a witness.

The new Interim Message Aliens Circular explicitly stipulates that a victim of trafficking can be eligible for a residence permit on humanitarian grounds after the conclusion of the criminal procedures (Interim Message par. 4.5). Criteria for granting a permit on humanitarian grounds are:

- the risk of reprisals against the victim and her family and the protection against such reprisals the national authorities are able and willing to provide;
- the risk of persecution in her country of origin, e.g. for prostitution;
- the possibilities of social reintegration in the country of origin (par. 4.6 of the Interim Message).

The NJCM welcomes this provision. However, it remains to be seen if in practice this provision means that more victims will be granted a residence permit on humanitarian grounds after the criminal case has ended.

The NJCM would like to get a confirmation that also under the new Interim Message a victim of trafficking, who decides to press charges, is immediately and automatically entitled to a temporary residence permit during criminal proceedings, including the period pending the decision whether or not a criminal investigation will be started.

As under the 'old' chapter B17, expulsion of (possible) victims may be suspended for three months and, if the victim decides to press charges, she/he may be given a temporary residence permit for the duration of the criminal proceedings. However, whereas under the old Chapter B17 a victim of trafficking who pressed charges was automatically and immediately entitled to a temporary residence permit *during* investigation, prosecution and trial, the new Interim Message states that a victim who presses charges is entitled to a temporary residence permit *inasfar* as criminal proceedings take place. Since it is often not immediately clear whether or not a criminal investigation will be started following the report of a victim, the NJCM wonders whether this change in wording indicates a change in policy or whether the wording is just not very carefully chosen.

The NJCM would like to know if, in the light of the principle of fair trial, the special provisions for victim-witnesses also apply to witnesses who want to testify to support the charges pressed by the suspect.

Both the old Chapter B17 and the Interim Measure provide for a temporary residence permit for victims who want to testify against the suspect. In the light of the principle of fair trial, the NJCM wonders if these provisions also apply to witnesses who want to testify to support the charges pressed by the suspect.

[Remarks on the second report]

Is the Netherlands Government aware of the fact that it takes several weeks to months before a residence permit for the duration of the investigation, prosecution and trial is granted to a victim? This is especially important since during this period the victim cannot claim social security benefits and medical assistance due to the Linkage Act. How will the Netherlands Government solve this problem?

The Netherlands Government states that during the above-mentioned three-month period, the victim can claim social security benefits and medical assistance (page 58). If she decides to report the offence, a residence permit will be granted at her request for the duration of the investigation, prosecution and trial. If a victim has a residence permit can claim social security benefits and medical assistance in pursuance of the General Support Act. However, as a result of the Linkage Act (*Koppelingswet*) which entered into force in July 1998, the victim cannot claim social security benefits and medical assistance before the residence permit has been granted. Therefore, the Minister of Justice promised to strive at deciding in one day on the application for a residence permit. In practice, the period between the application and the granting of the residence permit generally takes between several weeks and several months. During this period the victim cannot claim social security benefits and medical assistance.

Additional remarks on the third report

This problem seems to be solved, as the new Interim Message Aliens Circular explicitly arranges for the victim to be immediately entitled to social security benefits, medical assistance and housing during the above mentioned three-month reflection-period, the period of application for a temporary residence permit if she/he decides to press charges and the period she is granted a temporary residence permit (par. 3.2, 3.3, 3.4 and 4.5 of the Interim Message). It is explicitly mentioned in the Interim Message that the three month period of consideration is granted only one time and can not be extended. However, according to the NJCM, in special cases it should be possible to extend this period.

The NJCM would like to know which measures the Government intends to take to ensure the full and correct implementation of the policies on trafficking in women, and especially the rights of the victims, as laid down in among others the Aliens Circular?

It is still frequently reported (both by the Foundation against Trafficking in Women and by individual lawyers) that the police simply refuses to grant a victim the above mentioned three-month reflection-period. It is also frequently reported that the police immediately and on its own authority decides to dismiss the case when a victim presses charges, without consulting the Public Prosecutor and without formal notice to the victim, thus depriving the victim of the right to file a complaint against the decision to dismiss the case (Art. 12 Code of Criminal Procedure). The NJCM considers this to be in violation with the policies as laid down by the Government and as presented in the third report. The NJCM regards it of crucial importance that a victim can be sure that her complaint

will be taken seriously and that her courage to report to the police will not be 'rewarded' by immediate expulsion.

The existence of this problem seems to be confirmed by the figures mentioned by the Dutch Government in its third report. The report mentions that in 1998 219 and in 1999 288 victims of trafficking have been reported to the Foundation against Trafficking in Women (page 27), whereas in 1998 only in 21 cases and in 1999 only in 48 cases a temporary residence permit has been issued (page 31).

According to the figures given by the Dutch Government (page 27), from the 582 cases that were registered, 383 led to the prosecution of a suspect. The NJCM wonders if the Dutch Government can give information on what happened to the 199 cases that did not result in the prosecution of a suspect and why no prosecution took place.

The NJCM would like to know if, following the recent adoption of the Trafficking Protocol, the Dutch Government intends to broaden the existing legislation and provisions for victims of trafficking to include victims of other contemporary forms of trafficking and slavery-like practices.

The existing legislation and policies on trafficking in human beings are restricted to trafficking for the purpose of prostitution and do not cover other contemporary forms of forced labour, slavery like practices and servitude, such as the trade in domestic workers. However, recently a new Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, has been adopted which covers also trafficking for other forms of exploitation, slavery-like practices, forced labour and servitude.

Abolition of the ban on brothels

(Article 6 and 11)

The NJCM would like to know which measures the Dutch government intends to take to actively support the (labour) emancipation of sexworkers, including the strengthening of their legal position and the implementation of labour standards.

The NJCM fully supports the abolition of the ban on brothels, which makes it possible to extend the existing protection of workers provided by labour and civil law to persons working in the sexindustry. The NJCM considers this an important step forward in the improvement of the legal and social position of prostitutes and the protection of persons working in the sex industry against violence and abuse. However, in the Third Report no mention is made of any concrete measures to further support the (labour) emancipation of prostitutes, to improve their legal and social position, to implement existing labour standards and labour law protection in the sex industry and to counter the stigma suffered by prostitutes, neither under art. 6 nor under the other applicable articles (art. 1, 9, 11, 13, 12)

Obligation to carry ID papers

(Article 6, 2 and 3)

The NJCM would like to know how the Dutch Government evaluates the obligation to carry ID papers for (alleged) prostitutes in the light of the right to privacy and art. 3 of the Women's Convention.

Recently a new law has been accepted which introduces a obligation to carry ID papers for (alleged) prostitutes. No other professional group is subjected to such an obligation. The NJCM considers this measure to be discriminatory and stigmatising and in breach of the right to privacy, and as such of art. 3 of the Women's Convention.

Exclusion of non-EU residents
(Article 6 and 9)

The NJCM would like to know how the Dutch Government justifies the exclusion of non-EU migrant prostitutes from protection by labour and civil law as provided after the abolition of the ban on brothels to Dutch prostitutes, especially in the light of the prevention of trafficking in women.

Notwithstanding the decriminalisation of prostitution, non-EU prostitutes are excluded from the protection of labour and civil law since they are not permitted to work legally in the Netherlands. To this aim a special prohibition has been incorporated in the Law on Migrant Workers (WAV) and the draft Aliens Act, which prohibits the issue of employment, residence and work permits for work in the sex industry. Prostitution is the only type of work for which such a categorical prohibition is made. As a result, non-EU prostitutes will be pushed deeper into illegality and thus become more vulnerable for trafficking and other forms of abuse and violence.

**3.3 Article 7
Political and Public Life**

Percentage of Women in Political and Public Life
(Article 7(a) and (b))

The Netherlands report shows that the percentage of women in political and public life is relatively low and not increasing. The NJCM would like to know what measures the Government has in mind to alter this situation?

On 5 October 1993, the Netherlands Government put forward a Bill to add certain provisions to the Constitution on the matter of municipal and parliamentary elections. The proposed Bill for revision of the Constitution aimed at removing constitutional obstructions for a regulation that would make it possible to replace members of representative organs on a temporary basis, in order to make it easier for members of parliament to take pregnancy and maternity leave. The NJCM appreciates the effort of the Government to remove constitutional obstructions by regulating of this subject. Unfortunately, the Bill was rejected by Parliament.

The NJCM regrets the dismissal of this Bill, because it would have been an indication that the low participation of women in representative organs and other political functions, is being taken seriously. A replacement-regulation would take away at least one of the existing and discriminating barriers, and thus be an effective way to increase the number of women active in these functions. In the opinion of the NJCM, the adoption of the Bill would also have been in line with Article 7 of the Convention, as it would have given women a better opportunity to fully enjoy their right to participation in government and politics. Since the Netherlands report contains no information on the measures the Government has in mind to try to change the low (and even

decreasing) number of women active in politics, the NJCM wonders whether the Government simply accepts the fact that the set targets are not achieved (page 43).

Advisory Bodies
(Article 7(b))

The NJCM would like to know what the consequences are of the new policy concerning advisory bodies for policy advice on emancipation and gender matters? Is the Government willing to guarantee attention for gender issues in the work of the advisory bodies by introducing a legal obligation for the advisory bodies to take gender issues into account, and/or by systematically including gender aspects in its requests for advice?

On page 42 of the Netherlands report, the Advisory Bodies Framework Act is mentioned. The Government states that this Act has proved to be an important step forward towards promoting the participation of women in advisory bodies. The Framework Act lays down that a proportional percentage of women should participate in advisory bodies.⁹ However the main object of the Act was to considerably decrease the total number of advisory bodies. As a consequence, numerous advisory bodies were abolished, *inter alia*, the (Women's) Emancipation Council. In general, each Ministry now has only one (broad) advisory body. The remaining advisory bodies render advice on relatively broad areas of government policy. The NJCM considers that in such advices, the special positions and interests of (certain groups of) women are likely to receive less attention than in the advices of specialized advisory bodies.

The NJCM regrets that the Framework Act did not exempt the existing advisory bodies concerning women from being abolished. The fact that the Government has decided to install a Temporary Expertise Commission on Emancipation Matters (TECENA), for a working period of three years (page 18), does not change this. Although this Expertise Commission in principle can support the broader advisory bodies on all governmental policy issues, the requests for advice put forward to the advisory bodies by the Government most often do not specifically contain emancipation or gender aspects. Therefore, the opportunities to render advice in this field are further limited. The NJCM is of the opinion that the Framework Act should lay down an obligation for the advisory bodies to take specific emancipation and gender aspects into account in their advices, and urges the Government to raise these issues in its requests for advice towards the advisory bodies.

Political Party Not Allowing Women
(Article 7, General Recommendation No. 23)

The NJCM would like to know the opinion of the Committee on whether the Government should take measures against a political party, represented in Parliament, that does not allow women to become a member on an equal basis with men?

One of the smaller parties in Dutch Parliament, the Calvinist-orthodox SGP (*Staatkundig Gereformeerde Partij*) is known not to allow women as members of the party. This party also disapproves of women holding (leading) positions in politics or government. So far, the Netherlands Government has not taken any legal steps against this political party. The public

⁹ However, the number of women in advisory bodies does not automatically say something about the contents of their work.

prosecutor's office has decided not to prosecute the SGP on the ground of the anti-discrimination provisions in the Criminal Code (Sections 137(c)-137(f)). The SGP receives financial support (by the Government) for training, education and related activities on the same basis as all other political parties that are represented in the States-General. The Equal Treatment Act, which forbids discrimination in the fields of labour and contracts, does not apply to membership of associations (including political parties).

The lack of repressive governmental action against the SGP is based on the opinion that a case like this entails a clash between the prohibition of discrimination against women on the one hand, and the freedom of association, the freedom of religion and the freedom of speech of the political party on the other hand. In the Dutch legal tradition, there is no hierarchy between the fundamental rights, so it is not clear which right should prevail in a case like this. The NJCM would like to know the opinion of the Committee on this issue, and would like to have an indication by the Committee, in the light of paragraph 15 of General Recommendation No. 23, on the kind of governmental actions that could be recommended.

3.4 Article 8 **Representation at International Level**

Female International Civil Servants

(Article 8, General Recommendation No. 8, General Recommendation No. 23)

The NJCM would like to know what concrete measures the Netherlands Government is taking to increase the number of women representing the Government at the international level.

The sections in the Netherlands report dealing with the representation of the Government at the international level is brief (pages 49-50). It does provide relevant figures, though not for all aspects. While the report indicates that the Government aims at increasing the number of women, it gives no description of the specific measures taken that should lead to that result. Bearing in mind the extremely low percentage of women at the highest positions, it would have been appropriate for the Government to indicate what measures it intends to take to alter this situation.

The first paragraph dealing with level 2 (page 50) deals with the target figure for recruiting and securing the position of female civil servants. Because of lack of success, the programme was abolished. The report does not indicate whether the Government examined the reasons for the failure of the programme and the possibilities of starting a new programme. The NJCM is pleased to learn that there is special attention for the inflow of women towards higher positions, though specific information on the measures taken and results - even if it is preliminary - should have been included in the report.

Nominations for International Positions

(Article 8, General Recommendation No. 8, General Recommendation No. 23)

The NJCM would like to know how the Netherlands Government recruits women to represent the country at the international level, and why not more women are being nominated for expert bodies?

The NJCM would like to know whether the Netherlands Government supports the nominations from other countries if it concerns a woman, who fulfils, of course, the requirements laid down in the treaty concerned.

The NJCM would also like to know whether the Netherlands Government has a policy to support female candidates nominated by other countries.

The second paragraph on this issue again, does not provide any information on Government policy (page 50). How does the Government recruit women to represent the country? Does it request the assistance of experts in the field? And if indeed only 10% of the women are suitable to be nominated, which percentage is actually nominated? How does the Government set the criteria? Has it ever been examined whether such criteria are genuinely gender-neutral? The recent nomination (and election) of a male expert for the Committee on the Rights of the Child may serve as an example. The NJCM fails to see that among all the available candidates, there were no qualified women. While the NJCM believes that the nomination of women should certainly not be restricted to bodies dealing with women's and children's issues, the possibilities

of nominating women for expert bodies are so rare, that indeed every opportunity to nominate a woman for such a prestigious organ must be seized. The NJCM welcomes, of course, the fact that a woman was appointed as a judge in the European Court of Human Rights.

The final question the NJCM would like to raise in this respect, is whether the Netherlands Government has a policy to support female candidates nominated by other countries (providing that the candidate fulfils the requirements laid down in the treaty concerned).

With respect to future nominations, the NJCM wishes to invite the Government to draw up a list of women who might be eligible for functions in international organisations. Such a list could be drawn up in co-operation with NGOs, academics and women' organizations. The NJCM would like to know whether the Netherlands Government believes that such an initiative, which already exists for functions at the domestic level (Toplink), could contribute to increasing the number of women in international organs.

3.5 Article 9 Nationality Rights and Aliens Law

Double Nationality (Article 9(1))

The exclusion of the possibility to acquire a second - double - nationality in case of marriage to a foreigner, although formulated in a gender-neutral manner, is more disadvantaging for women than for men. Why does the Netherlands Government in these cases exclude the possibility of having a double nationality?

The present Netherlands Nationality Act, which came into force on 1 January 1985, does not make any distinction between men and women. Under this Act, it is not possible to acquire a second - foreign - nationality in case of marriage. In practice, this raises certain difficulties, especially for women. The fact that a woman loses her own nationality if she acquires the nationality of her husband, tends to be a greater disadvantage for women than for men. For example, if a Dutch woman marries a man from Egypt, it can be beneficial for her to obtain the Egyptian nationality for reasons of inheritance. It is also important that this woman can keep the Dutch nationality, since, for instance, an Egyptian woman cannot leave Egypt without the consent of her husband. Also, in case of a divorce, it is sometimes beneficial to have both the Dutch nationality and the nationality of the husband. Therefore, the law should provide for the possibility of granting double nationality in these cases.

Newcomers Assimilation Act (Article 9)

Is assimilation indeed the goal of the Newcomers Assimilation Act, or did the Netherlands Government misinterpret 'inburgering' (integration)? The NJCM would like the Netherlands Government to clarify this matter, since assimilation is forbidden under international law.

The Netherlands Government mentions its 'assimilation policy' (pages 51-52), and points out that 'Newcomers must do their best to assimilate into the community (...)' and 'In the future the aim

will be to adopt an approach that entails an actual obligation to assimilate.’ Assimilation means that persons who have a different culture have to give up their own, and assimilate completely to the Dutch culture. This is forbidden under international law.¹⁰ According to the NJCM, a more correct translation of the ‘Wet op *Inburgering* voor Nieuwkomers’ is ‘Newcomers *Integration Act*’.

Additional remarks on the third report

The NJCM is happy to notice that the Government has adjusted this mistaken translation in the third report.

Amendments to the Aliens Act Necessitated by the Linkage Act
(Article 9 and Article 12(2))

The Netherlands Government is, according to Article 12(2) of the Women’s Convention, obliged ‘to ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary (...)’. Due to the Linkage Act, which links the right to social benefits, free medical assistance *et cetera*, to the legal residence of aliens, immigrant women without a residence permit are *de facto* not in a situation in which they receive free medical assistance during and after their pregnancy. According to the NJCM, this is contrary to the meaning of the obligation under Article 12(2) of the Convention.

The Netherlands Government has mentioned in its report that ‘Under the human rights Conventions, the Netherlands authorities are obliged to provide the best possible health care and to do so without charge where the recipients of the care cannot pay for it themselves’ (page 52). Under the Linkage Act (*Koppelingswet*), undocumented¹¹ immigrants can only use health care services if they pay for it themselves, which they often cannot. An exception is made for life threatening situations, or if public health is at risk. However, these are rather vague notions.

For undocumented immigrants as well as for medical staff, it is often not clear in which situations medical assistance should be offered without payment. Even in the case of a life threatening situation, the medical staff first has to ask the undocumented immigrant to pay. If the medical staff can prove that this person is undocumented and cannot pay, the staff *might* get paid by a special fund, *Stichting Koppeling*, if they can show that they are structurally burdened with undocumented immigrants as patients who cannot pay. However, the staff has to make an estimation of their costs and hand in a proposal for refunding one year in advance. All this creates much extra administration for the medical staff. This might easily lead to a situation in which medical staff is not willing to offer medical assistance to undocumented immigrants, due to the fact that the medical staff might have to pay for it themselves in the end. In the situation of, for example, an undocumented immigrant who needs assistance during her pregnancy, she will first get billed and, only if she can prove that she cannot pay and if the medical staff is willing to help, she might obtain free medical assistance. This situation might even withhold an undocumented woman from asking medical assistance during her pregnancy and confinement.¹²

¹⁰ See Article 27 of the International Covenant on Civil and Political Rights (ICCPR), which reads: ‘In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.’

¹¹ The term ‘undocumented’ migrants refers to migrants who do not have a legal status of residence and/or a working permit. The term ‘illegal’ is also often used but doesn’t correctly describe the situation.

¹² Regarding post-natal care, see comments in paragraph 3.8 of this commentary regarding Article 12.

Additional remarks on the third report

The NJCM would like to know which measures the Netherlands Government intends to take to ensure that undocumented women and/or women in procedure for a residence permit are entitled to appropriate support services, a safe shelter and means of existence when they become victim of (domestic) violence and/or abuse.

Due to the Linkage Act undocumented women and women in an application procedure for a residence permit are excluded from social security benefits. As a result, it is almost impossible for them to find a safe refuge in case of violence and abuse, since many shelters refuse to take in (more than a certain number of) undocumented abused women, because of lack of financial resources if the women are not entitled to social security benefits. This problem has repeatedly been brought under the attention of the government by both women's shelters and women's organizations, but no solution has been reached till now. The NJCM would like to know which measures the Netherlands Government intends to take to ensure that all women in the Netherlands, including undocumented women and women in an application procedure, are protected from violence and abuse and have access to a safe shelter.

Women with a Dependent Right of Residence (Article 9, General Recommendation No. 19)

The Netherlands Government states that ‘(...) where there is *clear* evidence of abuse and violence (sexual or otherwise) leading to the breakdown of the marriage or relationship this *may* constitute a humanitarian ground for the issue of a permit’ (page 54) (emphasis added). What is meant with clear evidence? In which cases do abuse and violence not lead to a residence permit and why? Is the Netherlands policy in this regard in compliance with General Recommendation No. 19?

The NJCM wishes to point out that the outline given by the Netherlands Government in this paragraph at pages 54-55 regarding the rules which apply in case a relationship or marriage ends within three years and the rules which apply when it has lasted at least three years, are not correctly explained. In both cases, a woman *might* be granted a residence permit for humanitarian reasons. In case the marriage or relationship ends within three years, a residence permit will *not* be granted, unless there are serious humanitarian grounds or international obligations (Aliens Circular, chapter B1/2.2, 2.4 and B1/4.2, 4.4). In case the marriage or relationship lasts three years or longer, an independent residence permit will be granted if the following criteria are fulfilled: exactly one year after the marriage or relationship can be regarded as factually no longer existent (the partners do not live together anymore), a paid job for at least one more year must have been found which has to provide for a sufficient income (Aliens Circular, chapter B1/2.3 and B1/4.3).

Additional comments on the third report

The NJCM would like to know if the Dutch Government keeps statistics as to the number of residence permits issued on humanitarian grounds to women who end the relationship/marriage because of domestic violence within 3 years, before and after the introduction of the new policies as laid down in the

‘Women’s memorandum’ (‘Vrouwennota’), so that it will be possible to evaluate the effects.

Since June 2000 a new policy concerning women with a dependent residence permit was introduced in the so-called ‘Women’s Memorandum’ (‘Vrouwennota’): women with a dependent residence permit whose relationship/marriage has lasted three years or more are entitled to an independent residence permit without further requirements. Women who break off the relationship/marriage within a period of three years because of domestic violence are not entitled to an independent residence permit, unless a combination of humanitarian factors is present. Since 1997 one of these factors is the presence of domestic violence as the cause to break off the relationship/ marriage (Vc B1/2.4;4.4). However, research shows that in practice hardly any weight is given to this criterium. Notwithstanding strong protests from women's organizations, the Government has maintained the requirement of the presence of a *combination* of humanitarian factors. However, it has been promised that more weight will be given to the factor ‘domestic violence’. Although this might be an improvement, the NJCM is concerned whether this will constitute a change in practice.

Women Asylum-Seekers

(Article 2(c) and (d), Article 5, Article 9)

Contrary to the statement of the Netherlands Government that the Dutch asylum procedure is gender-neutral (page 56), research has shown that the procedure is biased, notwithstanding the fact that the same procedure is applied regardless of sex. Although the Government has issued several instructions specifically concerned with female refugees, these measures seem hardly adequate to deal with the elimination of gender bias and stereotyped ideas that influence the procedure. How does the Netherlands Government intend to further reduce the gender bias in the asylum procedure?

Regarding the difference between public and private acts in case a woman applies for asylum, the Netherlands Government states: ‘For example, although cooking may be a private act in most countries it may be regarded as a public act in other countries. This may be the case, for example, where women cook for resistance fighters; the authorities may regard this as an act of resistance. In such a situation “cooking” may lead to persecution’ (page 57). The NJCM wishes to point out that the Netherlands Government does generally not regard these acts as acts which can lead to the granting of asylum. This paragraph in the Netherlands report is therefore, according to the NJCM, misleading. Does the Netherlands Government agree with this conclusion of the NJCM? If not, could the Netherlands Government give examples of cases in which they did indeed give asylum to women in the aforementioned or a comparable situation? And if the Netherlands Government did so, was this the sole reason for granting asylum? Are these cases an exception or part of a general policy which is consistently applied in these cases?

Regarding gender-neutrality in the Dutch asylum procedure, analysis has brought to light that: ‘It [the asylum procedure] is modelled in the image of the male insurrectionist. If it allows for independent claims of women at all, its tendency is to conceptualise their stories as the stories of dependent wives, daughters and mothers. Information on the human rights situation of women in

the countries of origin is lacking all too often. In assessing the credibility of the flight stories, gendered standards are applied.¹³

Also, the Netherlands Government writes: 'Even if the wife reaches the Netherlands half a year after her husband, she can obtain an independent residence permit on the same grounds as previously cited by her husband' (page 57). The NJCM wishes to point out that this policy only applies to husbands who have been granted a refugee status. Furthermore, according to the Aliens Circular, the maximum period, within which the wife can apply for this permit, is in principle half a year.¹⁴ If a wife enters the Netherlands after this period, she is generally not granted a residence permit. In that case, the 'regular' family reunion rules apply. This means - amongst others - that her husband needs to have an income of approximately NLG 1,400 per month. For a refugee, it is hardly ever possible to meet this criterion.¹⁵

Furthermore, the NJCM wishes to clarify two paragraphs of the report of the Netherlands Government (pages 56-57): 'After a maximum of 24 hours, asylum-seekers whose application can be processed are transferred to a reception centre, where further interviews are conducted.' As of October 1999, the Netherlands Government has prolonged this period for persons applying for asylum from 24 hours to, normally, a maximum of 48 hours (night hours between 22.00 and 8.00 not included). Therefore, an asylum-seeker might have to stay three or four nights before being transferred to a reception centre.

Additional comments on the third report

Family reunion (Article 9 and 2)

The NJCM would like to know if the Government intends to investigate the effects of the new, stricter, criteria for family-reunion, in particular, as to their possibly indirectly discriminatory effect.

With the introduction of the Women's Memorandum and the new Aliens Law, the criteria - in particular the level of income required - for Dutch persons who apply for family-reunion with a foreign partner will be stricter. It can be expected that especially women will be affected by this higher income-requirement, since in general their income is lower than that of men. The NJCM fears that this might constitute a form of indirect discrimination of women and would like to know if the government has done any research on the effects of this measure or intends to do so.

Female labour migrants (Article 9 and 11)

Additional remarks on the third report:

The NJCM would like to know if the Netherlands Government intends to take measures to improve the position of migrant domestic workers, including access to legal working permits and regularisation schemes.

¹³ Thomas P. Spijkerboer, *Women and Refugee Status: Beyond the Public/Private Distinction* / a study commissioned by the Emancipation Council, The Hague, 1994 (Emancipation Council, Advice No. IV/05/94, September 1994).

¹⁴ Under the new proposed Aliens Act, this period is even brought back to three months.

¹⁵ Under the new proposed Aliens Act, the income requirement is even raised to approximately NLG 2,000 per month.

As a result of the feminization of migration, the number of female labour migrants has increased significantly. Due to the restricted options open to them, a substantial number of female labour migrants work as undocumented workers in the sexindustry or as domestic workers in private households (often as so-called 'au-pairs'). Female migrant domestic workers in private households respond to the increased demand for domestic work, child care and care for the elderly due to, among other factors, the increased labour participation of Dutch women and the still existing lack of facilities to combine private care tasks with (paid) work as well as the proportional increase of the ageing population. Whether working as 'au-pairs or undocumented, these women have no independent legal status, are not protected by labour law and have no workers' rights, which makes them especially vulnerable for abuse and exploitation. Moreover, even when they have been working in the Netherlands for ten years or more, they are excluded from regularisation schemes, such as the recent 'legally employed illegal aliens regularisation' because they do not meet the criteria for such schemes which are predominantly based on the male-work-in-the-formal-sector model (e.g. having a social and fiscal number and inclusion in tax schemes). According to the NJCM, the exclusion from labour law protection and regularisation schemes of exactly those sectors where predominantly (migrant) women work, might constitute a form of indirect discrimination.

3.6 Article 10 Formal and Non-Formal Education

Education of Women and Girls from Ethnic Minorities (Articles 3 and 10(f))

The NJCM is concerned about the fact that participation in primary, secondary and higher education of girls and women from ethnic minorities is lagging behind the educational participation of girls and women with a Dutch background.

The NJCM would like to focus its comments with respect to Article 10 on the situation of girls and women from ethnic minorities regarding education. The NJCM is aware of the fact that participation in education and actual school attendance not only depend upon the efforts undertaken by the State, but also upon social factors, such as the attitude of parents, teachers and children themselves. However, the NJCM is of the opinion that central and local authorities have a major responsibility and obligation to promote and supervise participation in education. Obligations in this field of social life may be based upon Article 10(f) and Article 3 of the Convention.

In the first report of the Netherlands, it was said that ‘girls from migrant families, however, (...) too often go on to the lowest forms of secondary education or leave school on reaching the age at which education ceases to be compulsory’.¹⁶ In the second report of the Netherlands it appears that no or little progress has been made to improve the situation of girls and women from ethnic minorities in education, compared to their counterparts with a Dutch background. In this second report, it is stated, for example, that ‘girls from ethnic minorities still often have a low level of educational attainment. 36% of them obtain no more than a comprehensive school leaving certificate, compared with only 13% of pupils with a Dutch background’. In addition, a large proportion of Moroccan and Turkish women only manage to complete their primary education. Furthermore, young people from ethnic minorities are barely represented in higher education (page 60).¹⁷

As a matter of fact, girls from ethnic minorities face a double educational back-log: as members of a minority who have no Dutch background, and as being girls. In the opinion of the NJCM, this situation justifies additional positive measures by local and national authorities. Therefore, the NJCM would like to know which special measures have been taken since 1994, if any, to promote the participation of girls from ethnic minorities in primary, secondary and higher education, to reduce the drop-out rate of this group of girls and to implement and supervise compulsory schooling of those girls between 4-16 years of age (compare Article 10(f) of the Convention). What have been the effects of the measures taken and which problems have been encountered? For example, what are the effects of the 1994 amendment of the Compulsory Schooling Act, which contains a stricter implementation and enforcement of compulsory schooling for girls from ethnic minorities? The NJCM would also like the Government to present more specified figures about the numbers of girls from ethnic minorities enrolled in education than the rather general Table 8.1 in the report (page 60). In particular, more detailed information

¹⁶ CEDAW/C/NET/1 and Add.1-3, 7 April 1993, para. 467.

¹⁷ See also the governmental report on Emancipation in Education 1998-2002, called ‘Een kristal van kansen’ [A Crystal of Opportunities], published in 1998, which describes the same problems. It is striking that the second report of the Netherlands does not refer to this emancipation report which was published before the periodic report of the Netherlands Government was finalized.

is requested about the percentage of Dutch boys and girls enrolled in the various types of education, compared to the percentage of boys and girls from ethnic minorities enrolled in education. In addition, more information about the different ethnic origin of ethnic minorities is necessary. Finally, the NJCM would like to know what measures the Government intends to take to cope with this problem in the next few years.

Additional remarks on the third report

Indirect discrimination of single mothers (Articles 10(a) and 11(1)e)

The NJCM would like to know what measures the Netherlands Government intends to take with regard to the indirect discrimination of women as a single parent in the regulation of education in the National Assistance Act.

The Supreme Court of the Netherlands, the *Hoge Raad*, ruled that the provisions on education while receiving social benefits are discriminatory against women who are a single parent (HR March 31, 2000). According to the National Assistance Act, people receiving a national assistance benefit are not allowed to take higher education courses during day time, while they are allowed to take evening classes. In the Netherlands evening child care facilities are even more scarce than day time facilities. Single parents will experience more difficulties in finding child care for the evening and thus in attaining higher education. Since the majority of single parents are women, the regulation in this area is indirectly discriminating against women. The NJCM would like to know how the Netherlands Government will solve this problem, especially since another court, the Centrale Raad van Beroep, has ruled that this regulation is not discriminatory (CRvB January 4, 2000).

3.7 Article 11 **Employment**

Participation of Women in Paid Work (Article 11(1))

The NJCM would like to know whether the Netherlands Government intends to evaluate the 1996 Working Hours Act, in terms of its contribution to the facilitation of the combination of paid and unpaid work. In particular, the NJCM is interested in the effects of the obligation for employers to take the personal circumstances of their employees into account.

As regards the employment position of women, the NJCM concludes that, although participation of women in paid work has increased, there is no equal participation of women on the labour market in comparison to men, regarding their remuneration, position and the unemployment rate. This is partly due to the fact that in the Netherlands women tend to work on a part-time basis or on the basis of flexible labour conditions. As a consequence, women are often not financially independent.

In the Netherlands report, it is stated that measures are taken in order to promote flexible work patterns which make it possible for women to find jobs which they can combine with their care

responsibilities (page 73). For that purpose, it refers to the Working Hours Act which came into force in 1996. This law, however, does not merely require employers to take account of personal circumstances of employees but, to a great extent gives more room for employers to introduce flexible working hours, for example shift work, longer opening hours, working overtime, variable working patterns, *et cetera*. These flexible working patterns do not automatically increase the possibility to combine work with non-paid activities. Many employees (40%) do find that the introduction of these flexible working patterns have had an adverse effect on their health and social well-being.

It is well known that working women very often prefer a working pattern which is stable and predictable, which makes it possible to organize care, *et cetera*. The legal safeguards preventing employers to disregard women's interests have a very limited scope. It is stated in the Working Hours Act that employers should only take into account the personal circumstances of employees in so far as it can be reasonably expected. This stipulation leaves sufficient room for employers to argue that they cannot take these circumstances into account. Furthermore, it does not oblige the employer to take into consideration the interests of each employee individually, but merely obliges the employer not to disregard employees interests in general. Therefore, this obligation does not provide sufficient protection against the adverse effects of the Working Hours Act on the well-being of employees.

Furthermore, the obligation for employers to give employees a 28 days notice of a change of working hours (page 73), does not provide sufficient protection, since exceptions are allowed on this stipulation. If employers cannot give a 28-days notice the employer is allowed merely to announce when there will be a weekly rest period. The exact hours of work can be announced 4 days in advance. This does not give sufficient time to adapt the day care facilities to the changed working hours. The protective provisions are therefore not sufficient. It would be advisable to provide for stronger individual protection of employees against changes in working patterns, *et cetera*.

Parental Leave

(Article 11(2)(c))

The NJCM would like to know how the Netherlands Government intends to stimulate men to take up parental leave.

Women shoulder the greater part of unpaid caring activities. The growing participation of women on the labour market has not resulted in an equal increase of the participation of men in unpaid care. It is noted in the Netherlands report that men are likely to take up more parental leave, if it would be paid (page 77). The NJCM would like to know what concrete measures the Netherlands Government intends to take to ensure that men are indeed taking up parental leave.

Unpaid Care

(Article 11(c) and (e))

The NJCM would like to know whether the Netherlands Government regards providing unpaid care as work, and, if so, what measures are planned to treat the providing of unpaid care as such.

In this respect, the NJCM would like to know what measures the Netherlands Government intends to take to repair the detrimental effects of the Surviving Dependents Act for elderly women without a working past.

If the Netherlands Government does not regard unpaid care as work, the NJCM would like to know what measures it plans to take to stimulate women who have a partner with income to find work, and what measures it plans to take to provide this category of women with work.

Despite the fact that women do not participate on the labour market on an equal basis, it is taken as a preposition that women should be economically independent and fully responsible for gaining their own income. In some situations this does not match with reality where some generations of women have been dependent on their spouses income and are not able to earn their own income if they loose their husbands income. In the Surviving Dependants Act, which was introduced in 1998 (page 75), only certain categories of women are entitled to a surviving dependants benefit, *i.e.* if they have children under the age of 18, if they are disabled or if they are born before 1950. Therefore, women who do not comply with these conditions, are not entitled to a surviving dependant's benefit. Since it may be very difficult for some women in this category to find paid work, especially if they have not had sufficient education or working experience in previous years, the law appears to be very harsh in this respect.

It is stated in the Netherlands report that parents with a benefit under the New National Assistance Act are exempted from the obligation to seek work for social reasons, *i.e.* if they are parents (single or otherwise) with children under the age of five years (page 75). It is stated that there have been debates about this exemption. These debates have continued recently. In particular, the Government plans to restrict this possibility to exempt these parents from their obligation to find work and to oblige women with children under the age of four to apply for work, if they receive social assistance benefit (see page 4 of this commentary).

At the same time, the women who have a partner who earns an income, are not stimulated to to paid work as a consequence of the tax system. Married or cohabiting persons receive a reduction on income tax, if they have a partner that does not have an income at all. As a consequence of these measures, it is unattractive for women, in particular in the lower income range, to return to work after they have children. The costs of childcare and the tax disadvantage do not make it attractive for women to go out and find paid work. In this way, women are not stimulated to stay economically independent after they have given birth.

3.8 Article 12 Health Care

Reporting Requirements (Article 12)

The Netherlands report on Article 12 is brief. Why does the Government not deal with this issue in more detail, in particular by explaining how it intends to implement the great number of recommendations resulting from the study into the meaning of Article 12 for the Netherlands? (see Special Annexe of the Netherlands report).

The report of the Netherlands Government on health care is rather brief, in particular considering the requirements for State parties' reports found in the general recommendations. The NJCM therefore considers that the recommendations of the Committee in its concluding observations on the previous Netherlands report have not been taken into consideration. For instance, although General Recommendation No. 18 on disabled women 'recommends that States parties provide information on disabled women in their periodic reports, and on measures taken to deal with their particular situation, including special measures to ensure that they have equal access to education and employment, health services and social security, and to ensure that they can participate in all areas of social and cultural life' (paragraph 6), no attention is paid to these subjects by the Netherlands Government in its present report. The Netherlands report mentions financial support for research projects, and other initiatives regarding health care for women. However on the effects of these projects and initiatives the report remains silent. Furthermore, the report frequently refers to research projects and studies without elaborating on their contents or effects. Thus, many areas of concern are actually not reported on. The Netherlands report therefore suggests that there are no (significant) problems which deserve to be mentioned in the areas which have not been reported on. This suggestion is not justified, as follows from the following comments.

Access to Health Care for Undocumented Migrants
(Article 9, Article 12, General Recommendation No. 19)

Can the Netherlands Government explain why it - apparently - thinks that the detrimental consequences of the Linkage Act for the health of female undocumented migrants are nevertheless in conformity with the obligations under Article 12?

Recently, access to health care for undocumented migrants has become increasingly difficult. This has been caused by the entry into force of the Linkage Act in July 1998. In addition, the restrictive admission policy has meant an increase in numbers of undocumented migrants who are excluded from the health care facilities. Women are disproportionately affected by this development, as they require specific health care facilities related to their sex, for example during pregnancy. Other examples are post-natal care and care for the new born child. In addition, a lot of these women have been victims of sexual violence in their home country. A denial of access to health care facilities under these circumstances means that they cannot seek professional help in the Netherlands to overcome mental or physical problems caused by sexual abuse which they had to endure in their home country.

The entry into force of the Dublin Convention determining the state responsible for the processing of an asylum application lodged in one of the Member States of the European Communities¹⁸ has had implications for access to health care facilities in the Netherlands. The Dutch authorities can place a claim under this Dublin Convention in order to establish which Contracting Party is responsible for the processing of the application for asylum. During the period which is needed to process the claim, the individual concerned is denied, *inter alia*, access to health care facilities (with a few exceptions). Thus, yet another group of women is excluded from the Dutch health care facilities.

Finally, the Dutch authorities have opted for a 'policy of tact' and not penalization by criminal law in case of female circumcision is concerned. Thus, women and mothers are informed about the risks and harmful effects of female circumcision. The success of this approach largely depends on the possibilities available to the authorities to reach these women/mothers. *Zuigelingen bureaus* (institutions for the care of the new born child), schools and general

¹⁸ 'Dublin Convention', in: *Official Journal of the European Communities*, 1997, C 254/1.

practitioners are the best ways to come in contact with women and mothers. In the Netherlands, however, undocumented female migrants have very limited access to basic health care facilities or institutions for the care of the new born child. Thus the possibilities to inform and influence these women are reduced. In addition, young mothers and girls above the compulsory school age do not attend school. Consequently, schools cannot be used to reach this group. The report fails to mention how the Netherlands Government intends to reduce and combat female circumcision in the Netherlands successfully, especially with regard to the group of women mentioned above. (See for more on this issue, paragraph 3.5 of this commentary on Article 9).

Additional remarks on the third report

The Netherlands Government suggests that there is an adequate system to finance health care for undocumented immigrants in case of life threatening situations. However, in practice access to (adequate) medical care in these situations is problematic for undocumented immigrants. How does the Netherlands Government intend to improve this situation?

In practice there are various examples of cases in which undocumented immigrants have no access to (adequate) medical care. Hospitals fear that they will not receive payment for medical care supplied to undocumented immigrants, since this is only granted to them when they can prove that they are structurally burdened by undocumented immigrants who cannot pay the bill. The working group on health care and undocumented immigrants of the Johannes Wier Foundation receives several complaints per month that undocumented immigrants do not receive necessary medical care.¹⁹ And these are only the reported and thus known cases. One reported case concerned a Polish woman who broke her leg.²⁰ When the board of the hospital was informed that she resided illegally in the Netherlands, they told the doctor to apply the usual surgery only if her life was in danger. Since this was not the case, according to the doctor, he did not apply the surgery. However, the next day serious complications arose. In the end she had to be operated several times.

Sexual Violence

(Article 3, Article 12(1), General Recommendation No. 19)

Could the Netherlands' government indicate in more detail whether action undertaken to combat sexual violence has been successful and to what extent? In particular, does the government intend to initiate programmes aimed at the prevention of sexual violence in (mental) health care institutions?

The Netherlands report mentions increasing attention for women who have been a victim of sexual violence (page 96). In particular, the attention of health care providers for this problem is emphasized. The Netherlands Government also mentions that organizations and institutions generally concerned with care for women, in particular the struggle against sexual violence, receive large sums of financial support. Yet, the Netherlands Government does not elaborate in its report on the effects of the activities developed by these organizations and institutions.

¹⁹ The Johannes Wier Foundation is a private organisation dealing with health care and human rights; it is located in Amersfoort in the Netherlands.

²⁰ See also Van den Muijsenbergh, M.E.T.C. and E.K. Fogelberg, 'Ziekenhuis onthoudt illegaal noodzakelijke zorg' (*Hospital denies necessary care to illegal immigrant*), *Medisch Contact*, 1999 (54), p. 354-355.

No mention is made in the report of the fact that sexual violence often occurs within the professional health care itself. For instance, health care providers abuse their patients, and patients abuse other patients. Article 37(1) of the Criminal Code (*Wetboek van Strafrecht*) increases the risk of patients abusing other patients. According to this provision, judges can order admission to a psychiatric hospital instead of a *tbs-inrichting* (an institution for detention during her Majesty's pleasure) when sexual offenders are found *non compos mentis* or in a state of diminished responsibility. Considering the vulnerable position of victims of sexual violence who have been admitted and are undergoing therapy in the same psychiatric hospital and the possibility of recidivism, this development gives rise to concern.

(See for more on sexual violence, paragraph 3.1 of this commentary on Article 3).

Elderly Women

(Article 12(1), General Recommendation No. 24)

Why does the Dutch report not contain any information on the position of elderly women in relation to health care? This is surprising given the fact that women as a group live longer than men, and are generally financially far less well provided for.

As the Dutch population is ageing, the number of elderly people has increased. Statistically, in the Netherlands women grow older than men. Thus, problems related to old age on the whole, concern more women than men. In General Recommendation No. 24 on women and health (paragraph 24), special attention is drawn to issues regarding elderly women. The Contracting Parties are encouraged to ameliorate the position of these women. Problems related to health care in the Netherlands which have to be faced by, in particular, elderly women are:

- Longer waiting lists for special care in hospitals.
- Difficulties in obtaining home care when required, as a result of problems related to the financing this kind of care.
- Increasing financial contributions for health care and higher health care insurance premiums.
- The shortage of general practitioners, especially in the cities (*i.e.* Amsterdam, Rotterdam, The Hague and Utrecht).
- Longer waiting lists for institutionalized care for the elderly.

These problems are not touched upon by the Netherlands Government in its report.

3.9 Article 16 Personal and Family Rights

Additional remarks on the third report

The NJCM is surprised by the opening statement of this chapter where it is stated that equal treatment in family law has been realised. How does the Netherlands Government explain this, considering that this whole area of law is still arranged along lines of gender (e.g. the law of names and the law of parentage)? What, according to the Netherlands Government, does equal treatment mean in this respect?

Registered Partnership
(Article 16(1))

The NJCM would like to know how the Netherlands Government, in the light of Article 16(1)(a), justifies the unequal treatment of heterosexual and lesbian couples with regard to marriage?

The Netherlands deserves credit for the fact that legislation was presented to the Second Chamber of Parliament on 8 July 1999 which makes it possible for same sex couples to marry.²¹ The Netherlands is the first country in the world to introduce legislation with this effect.

The Bill does not allow for the same marriage as between heterosexuals and lesbian couples, but provides for an adapted form of marriage for same sex couples: the consequences in the field of filiation law are excluded. This means that the rule that the husband of the woman who gives birth during marriage is the father (the legal parent) of the child (even if he is not the biological father), is not applicable. The husband who has consented to an artificial insemination procedure is even not allowed to deny that he is the child's father although he is not the biological father (Article 200 sub 3 Book 1 of the Civil Code). In contrast, no legal filiation link is created when the 'husband' is a woman. Accordingly, even when - and if - this legislation comes into force, heterosexual and homosexual couples will still not be treated the same with regard to marriage. This unequal treatment concerns especially women, since a child can be born within a marital relationship of two women. The alternative regulation of the legal relationship with a child being born and brought up within a homosexual relationship by means of joint authority (and in the future adoption) is not the best solution for the child in all cases. In the case of joint authority the female partner of the biological mother is not regarded as the parent of the child and has therefore not the same rights as legal parents do (for example with regard to the right of access). Adoption also does not offer an optimal legal protection, since *inter alia* it takes at least 1 to 3 years until the request for adoption can be granted (Article 227 and 228 Book 1 Civil Code).

Additional remarks on the third report

Parliament has recently adopted a motion asking the Government to amend the Civil Code provisions on adoption by the co-parent so as to drop the required waiting period of 1 to 3 years. The NJCM hopes that the Government will abide by this motion and carry it out expediently.

The same Bill includes the possibility of converting marriage into a registered partnership and *vice versa*. It may be doubted whether conversion of marriage into registered partnership is apt to further the interests of women. This is because marriage is a status enjoying international recognition, whereas registered partnership is not. Conversion of a marriage into a partnership would be against the interest of any woman as soon as the effects outside the Netherlands (or other countries recognising registered partnership) are tested. All rights (e.g. maintenance, matrimonial property regime, residence status, rights regarding children) which flow from marriage or partnership according to Dutch law, are at risk of not being recognised as soon as the partnership operates outside the Dutch legal system. Furthermore, registered partnership has no consequences for the legal status of any children born to an opposite sex couple. Overall this last difference is probably more disadvantageous for men than for women.

Parental Authority over Children

²¹ Second Chamber, session 1998/1999, 26 672.

(Article 16(1))

The NJCM would like the Netherlands Government to explain why parents have to share the parental authority after dissolution of the marriage by law, while in most cases the mother bears the actual responsibility of rearing the child alone after divorce. This could also be contrary to the equality principle laid down in Article 16(1)(d) and (f).

Firstly, the NJCM would like to note that on page 102 of the Netherlands report (first paragraph last line), the maintenance obligation is misstated: the maintenance obligation continues after termination of the shared custody for the same length of time as the period for which custody was shared (Article 253(w) Book 1 Civil Code).

Since 1 January 1998, joint parental authority continues automatically after divorce, unless one of the parents asks the court for sole custody (Article 251 Book 1 Civil Code). The parent who asks for sole custody, has to convince the court that this is in the best interests of the child. That turns out to be quite difficult in practice. Joint authority does not change the fact that in the vast majority of the cases the mother has become the primary caretaker after divorce. The responsibility of rearing the child is not equally shared, but actually rests with one parent: the mother. The father keeps a voice in matters that concern the private and family life of the mother. This is especially problematic when the reason for divorce was domestic violence. Another problem occurs for example when the father refuses to bring the children back after a visit. The mother cannot call in the police: the police are no longer competent to intervene, since both parents have parental authority over the child. Research in many Western-European countries has shown that the effects of joint custody are largely symbolic. The NJCM considers it necessary, in the interests of children who may be caught between two parents who are obliged to co-operate, that the effect of this provision upon mothers and children is monitored. The NJCM is also of the opinion that it is desirable that schemes designed to assist families to co-operate in the post-divorce phase (such as the supervised access arrangement provided by the Child Protection Agency in Maastricht), be supported and extended.

Law of Names

(Article 16(1)(g))

Can the government explain why it holds the opinion that the recently amended Law of Names does not contravene CEDAW since under this law the married father has been given the decisive vote regarding the the choice for the family name of the child.

In the new law of names (pages 102-103), women are at a disadvantage, because within marriage the father's name is decisive for the child's name when the parents do not reach an agreement or when they do not make a choice. The fact that the mother's name is decisive when a child is born out of wedlock, does not remove this distinction. The vast majority of the children are born during a marriage, and marriage also offers the best legal protection for a child (see also page 3 of this commentary).

Law of Parentage

(Article 16(1))

The NJCM would like to know why the interests of the mother are not weighed on an equal basis as the rights of the father and the child, vis-à-vis the recognition of a child.

The NJCM is of the opinion that the phrase ‘family law relationship’ (page 103) which is vague, should be replaced with the term used by the Council of Europe: ‘legal filiation link’. This problem recurs in later paragraphs.

The Netherlands report does not explain that this legislation, although retaining the basic requirement that the mother should give consent to recognition by the unmarried father, makes it considerably more likely that the mother’s consent would be dispensed with. Whereas, before this legislation came into force, the mother’s consent could only be dispensed with if her refusal amounted to a misuse of her rights, Article 204(3) Book 1 of the Civil Code now provides that the aspirant-recognizer who is the child’s begetter, may apply to the court for dispensation of her consent. This dispensation will be granted if the recognition will not be detrimental to ‘the mother’s interests in an undisturbed relationship with the child, or the child’s interests’. The mother’s interests in not allowing the recognition are not included, except insofar as this has consequences for the child. It can be doubted whether the mother’s interests are adequately protected.

Judicial Determination of Paternity

(Article 16(1))

The NJCM is wondering why a five year time limit has been established, for a mother to start proceedings for judicial determination of paternity.

The five year time limit which applies to the mother who brings an action for judicial determination of paternity is not satisfactory. The mother may have good reasons for not bringing the action at an earlier stage: to protect the father from embarrassment, because of fear of the father, especially if he is in a position of power over her (for example at work), because judicial proceedings may destroy a co-operative arrangement, or because the father has no money. Since the mother can also start proceedings in the child’s name, the NJCM does not understand why this restrictive five year rule against the mother has been established. This is especially strange since the possibility for biological fathers to acknowledge a child against the will of the mother is not limited in time.

Denial of Paternity
(Article 16(1))

The NJCM would like to know why Article 200 Book 1 of the Civil Code subs 3 disregards the fact that the child can also be conceived without the consent of the mother? Is the Netherlands Government prepared to modify the article in this respect?

According to Article 200 Book 1 of the Civil Code, it is possible for the mother, father or child to commence proceedings challenging the presumption of paternity of the mother's husband. The challenge is based on the claim that the husband is not the begetter of the child. In Article 200 Book 1 of the Civil Code sub 3, the mother's and husband's right to challenge is removed, if the *husband* has consented to an act which could have caused the pregnancy. The idea is that a husband who has consented to an artificial insemination procedure or any other procedure which might have caused pregnancy, should not be allowed to come to court later and deny that he is the child's father, just because he is not the begetter. This provision prevents also the mother from challenging the presumption of paternity. Article 200 sub 3 does not provide that *she* must have consented to the procedure leading to conception; the section only refers to the husband's consent. This rule, which ignores the relevance of the woman's right to consent in this matter which affects her so intimately, should be changed. Whatever the practical effects of the provision - so far there has been no case of this kind - it is not right that the woman's consent is treated as irrelevant.

Adoption of Minors in the Netherlands
(Article 16(1)(f))

What is the meaning of the clause 'nothing to expect from the biological parent' in the proposed legislation on adoption? Why is this clause introduced simultaneously with the possibility of adoption by same sex couples?

The new law on parentage, which came into force on 1 April 1998, does *not* provide for the possibility of adoption for same sex couples. Contrary to what the Netherlands Government claims (page 104), it is still required that couples are of the opposite sex. Legislation which aims at making adoption of (only) Dutch children possible for persons of the same sex was presented to the Second Chamber of Parliament on 8 July 1999.²² This Bill introduces at the same time a new condition for adoption. Apart from already existing conditions, it proposes that adoption - apart from the already existing conditions - will only be possible if the child has nothing to expect anymore from its original parent or parents.

Transgender Persons
(Article 5(a), Article 16)

Why is a transgender person required to obtain a divorce in order to be able to apply for a legal change of sex status?

This remark relates to male-to-female and female-to-male transsexuals. Although the Netherlands has a humane policy towards transgender persons, and legislation provides for a complete change of legal status into the acquired sex, there is one problem with the legislation.

²² Second Chamber, session 1998/1999, 26 673.

The provisions require that the transgender person seeking a legal change of status divorces from his or her former spouse (Article 28(1)(a) Book 1 Civil Code). This seems an unnecessary and cruel measure. A proposal to introduce reform has been included in the legislative proposal on same sex marriage. It is to be hoped that this will soon become law.

4. Executive Summary and List of Questions

4.1 Executive Summary

In this commentary, the NJCM has expressed its concern about the stagnating process of progressive implementation of the Women's Convention in the Netherlands. In several areas, such as the participation of women in decision making, combating sexual violence, and equal pay for work of equal value, statistics show little progress. Nevertheless, in many of these areas there is no mention of comprehensive action plans. Another cause for concern is the increasing tendency to mainstream. Although the growing emphasis on 'diversity' and 'cultural change' is laudable in itself, the simultaneous decrease in - explicit - attention for gender issues is worrying both for women belonging to dominant groups in society, but in particular for women belonging to marginalized groups. The NJCM is of the opinion that a two-way-approach, *i.e.* both mainstreaming and specific attention for (groups of) women is indispensable.

4.2 List of Questions

Note:

- *question on the second report*
- *question on the third report*

General Remarks

National and International Reporting Procedures (Article 18, General Recommendation No. 1):

- The Netherlands Government states that its second periodic report to CEDAW was delayed, due to the scale of the national reporting procedure to Parliament (pages 3 and 110). The NJCM would like to know what the reasons were to start the national procedure only in 1996 (page 4), whereas the first national report should have been submitted already in 1995.

Equality Principle (Last preambular paragraph, Articles 1-3, Article 5, General Recommendation No. 6):

- The Netherlands Government states its firm commitment to achieve full implementation of the Convention (pages 5 and 110). The NJCM would like to know how it is to be explained that other interests are regularly given priority over the sex-equality principle as contained in the Convention, even at the 'first level' of direct discrimination?

Judiciary (Article 2(c), General Recommendation No. 6):

- The NJCM would like to know why the - allegedly successful - programme to better acquaint the judiciary with the implications and requirements of CEDAW has not been continued? (page 109).

National Machinery and Emancipation Support Policy (General Recommendation No. 6):

- The NJCM is wondering whether it is the intention of the Netherlands Government to evaluate its new policy with regard to the organization and support of Dutch emancipation policy? Has the Government developed a comprehensive plan to ensure specific attention for gender issues within mainstream areas?

Implementation (Article 2)

- The third report mentions many researches that have been undertaken or will be undertaken, but in many areas implementation policies are lacking. Moreover, in several instances the results of the research undertaken are not explained, nor are follow-up plans outlined. The NJCM would like to know whether follow-ups have merely been omitted from the report or whether they are so far non-existent.

Article 3 / Article 1

Human rights policy

- The NJCM suggests that CEDAW invites the Dutch government to explain its views on a gender sensitive human rights policy in accordance with Article 3.

Persistence of Violence Against Women

- The NJCM would like to know what concrete measures the Netherlands Government intends to undertake in order to ensure that measures to combat violence against women are incorporated firmly into legislation and policy.
- In particular, the NJCM would like to express its distinct disappointment at the lack of any results and consequences of policy in the Netherlands report. It would like to ask the Netherlands Government to indicate the concrete results of the various policies and reports, and present an assessment of their effectiveness.

Coherent Policy

- The policy and legislative measures regarding sexual violence do not seem to be part of a wider, more coherent and comprehensive vision on how to combat violence against women. The NJCM would like to know whether the Netherlands Government has developed an encompassing framework in this respect, and if not, if it intends to do so.
- The NJCM would also like to know what has happened with the ‘interdepartmental plan of action to prevent and combat violence against women’ since it was drafted in January 1998.

Legislative Measures (see also Article 2)

- The gender-neutral formulation of all legislative measures with regard to violence, indicated by the Netherlands Government in its report (pages 24-25), is cause for concern (see also page 4 of this commentary), in particular because mechanisms to generate specific attention for the problems of women are lacking. The NJCM would like to know what advantages this gender-neutral approach has according to the Government, and how the Government intends to guarantee specific protection of women.
- The NJCM would also like to know what criteria have been used, in this context of violence against women, to distinguish measures of ‘level 2’ from those of ‘level 3’.

Article 6

Victims of Trafficking in Women

- The NJCM would like to know if the Dutch government keeps statistics as to the number of victims of trafficking granted a residence permit on humanitarian grounds before and after the introduction of these criteria, so that it will be possible to evaluate the effects.
- The NJCM would like to have confirmed that also under the new Interim Message a victim of trafficking who decides to press charges is immediately and automatically entitled to a temporary residence permit during criminal proceedings, including the period pending the decision whether or not a criminal investigation will be started.

- The NJCM would like to know if, in the light of the principle of fair trial, the special provisions for victim-witnesses also apply to witnesses who want to testify to the advantage of the suspect.

Abolition of the ban on brothels (See also Article 11)

- The NJCM would like to know which measures the Government intends to take to ensure the full and correct implementation of the policies on trafficking in women, and especially the rights of the victims, as laid down in among others the Aliens Circular?

Obligation to carry ID papers (See also Article 2 and 3)

- The NJCM would like to know how the Dutch Government evaluates the obligation to carry ID papers for (alleged) prostitutes in the light of the right to privacy and art. 3 of the Women's Convention.

Exclusion of non-EU residents

- The NJCM would like to know how the Dutch Government justifies the exclusion of non-EU migrant prostitutes from protection by labour and civil law as provided after the abolition of the ban on brothels to Dutch prostitutes, especially in the light of the prevention of trafficking in women.

Article 7

Percentage of Women in Political and Public Life

- The Netherlands report shows that the percentage of women in political and public life is relatively low and not increasing. The NJCM would like to know what measures the Government has in mind to alter this situation?

Advisory Bodies

- The NJCM would like to know what the consequences are of the new policy concerning advisory bodies for policy advice on emancipation and gender matters? Is the Government willing to guarantee attention for gender issues in the work of the advisory bodies by introducing a legal obligation for the advisory bodies to take gender issues into account, and/or by systematically including gender aspects in its requests for advice?

Political Party Not Allowing Women

- The NJCM would like to know the opinion of the Committee on whether the Government should take measures against a political party represented in Parliament, that does not allow women to become a member on an equal basis with men?

Article 8

Female International Civil Servants

- The NJCM would like to know what concrete measures the Netherlands Government is taking to increase the number of women representing the Government at the international level.

Nominations for International Positions

- The NJCM would like to know how the Netherlands Government recruits women to represent the country at the international level, and why not more women are being nominated for expert bodies?
- The NJCM would like to know whether the Netherlands Government supports the nominations from other countries if it concerns a woman, who fulfils, of course, the requirements laid down in the treaty concerned.
- The NJCM would also like to know whether the Netherlands Government has a policy to support female candidate nominations by other countries.

Article 9

Double Nationality

- The exclusion of the possibility to acquire a second - double - nationality in case of marriage to a foreigner, although formulated in a gender-neutral manner, is more disadvantaging for women than for men. Why does the Netherlands Government in these cases exclude the possibility of having a double nationality?

Amendments to the Aliens Act Necessitated by the Linkage Act

- The Netherlands Government is, according to Article 12(2) of the Women's Convention, obliged 'to ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary (...)'. Due to the Linkage Act, which links the right to social benefits, free medical assistance *et cetera*, to the legal residence of aliens, immigrant women without a residence permit are *de facto* not in a situation in which they receive free medical assistance during and after their pregnancy. According to the NJCM, this is contrary to the meaning of the obligation under Article 12(2) of the Convention.
- The NJCM would like to know which measures the Netherlands Government intends to take to ensure that undocumented women and/or women in procedure for a residence permit are entitled to appropriate support services, a safe shelter and means of existence when they become victim of (domestic) violence and/or abuse.

Women with a Dependent Right of Residence

- The Netherlands Government states that '(...) where there is *clear* evidence of abuse and violence (sexual or otherwise) leading to the breakdown of the marriage or relationship this *may* constitute a humanitarian ground for the issue of a permit' (page 54) (emphasis added). What is meant with clear evidence? In which cases do abuse and violence not lead to a residence permit and why? Is the Netherlands policy in this regard in compliance with General Recommendation No. 19?
- The NJCM would like to know if the Dutch Government keeps statistics as to the number of residence permits issued on humanitarian grounds to women who end the relationship/marriage because of domestic violence within 3 years, before and after the introduction of the new policies as laid down in the 'Women's memorandum' ('Vrouwennota'), so that it will be possible to evaluate the effects.

Women Asylum-Seekers (See also Article 2(c) and (d), Article 5):

- Contrary to the contention of the Netherlands Government that the Dutch asylum procedure is gender-neutral (page 56), research has shown that the procedure is highly biased, notwithstanding the fact that the same procedure is applied regardless of sex. Although the Government has issued several instructions specifically concerned with female refugees, these measures seem hardly adequate to deal with the elimination of gender bias and stereotyped ideas that influence the procedure. How does the Netherlands Government intend to further reduce the bias in the asylum procedure?

Family reunion (Article 2)

- The NJCM would like to know if the Government intends to investigate the effects of the new, aggravated, criteria for family-reunion, in particular, as to their possibly indirectly discriminatory effect.

Female labour migrants (Article 11)

- The NJCM would like to know if the Netherlands Government intends to take measures to improve the position of migrant domestic workers, including access to legal working permits and regularisation schemes.

Article 10

Education of women and girls from ethnic minorities (Article 3):

- The NJCM is concerned about the fact that participation in primary, secondary and higher education of girls and women from ethnic minorities is lagging behind educational participation of girls and women with a Dutch background.

Indirect discrimination of single mothers (Article 11(1)e)

- The NJCM would like to know what measures the Netherlands Government intends to take with regard to the indirect discrimination of women as a single parent in the regulation of education in the National Assistance Act.

Article 11

Participation of Women in Paid Work

- The NJCM would like to know whether the Netherlands Government intends to evaluate the 1996 Working Hours Act, that allows for more flexibility in terms of its contribution to the facilitation of the combination of paid and unpaid work. In particular, the NJCM is interested in the effects of the obligation for employers to take the personal circumstances of their employees into account.

Parental Leave

- The NJCM would like to know how the Netherlands Government intends to stimulate men to take up parental leave.

Unpaid Care

- The NJCM would like to know whether the Netherlands Government regards providing unpaid care as work, and, if so, what measures are planned to treat the providing of unpaid care as such. In this respect, the NJCM would like to know what measures the Netherlands Government intends to take to repair the detrimental effects of the Surviving Dependents Act for elderly women without a working past. If the Netherlands Government does not regard unpaid care as work, the NJCM would like to know what measures it plans to take to stimulate women who have a partner with income to find work, and what measures it plans to take to provide this category of women with work.

Article 12

Reporting Requirements

- The Netherlands report on Article 12 is brief. Why does the Government not deal with this issue in more detail, in particular by explaining how it intends to follow up on the great number of recommendations resulting from the study into the meaning of Article 12 for the Netherlands? (see Special Annexe of the Netherlands report).

Access to Health Care for Undocumented Migrants

- Can the Netherlands Government explain why it - apparently - thinks that the detrimental consequences of the Linkage Act for the health of female undocumented migrants are nevertheless in conformity with the obligations under Article 12?
- The Netherlands Government suggests that there is an adequate system to finance health care for undocumented immigrants in case of life threatening situations. However, in practice access to (adequate) medical care in these situations is problematic for undocumented immigrants. How does the Netherlands Government intend to improve this situation?

Sexual Violence (Article 3):

- Will the Netherlands' government indicate in more detail whether action undertaken to combat sexual violence has been successful and to what extent? In particular, does the government intend to initiate programmes aimed at the prevention of sexual violence in (mental) health care institutions?

Elderly Women

- Why does the Dutch report not contain any information on the position of elderly women in relation to health care? This is surprising given the fact that women as a group live longer than men, and are generally far less well provided for financially.

Article 16

Sex-based distinctions in personal and family rights

- The NJCM is surprised by the opening statement of this chapter that equal treatment in family law has been realised. How does the Netherlands Government explain this, considering that this whole area of law is still arranged along lines of gender (e.g. the law of names and the law of parentage)? What, according to the Netherlands Government, does equal treatment mean in this respect?

Registered Partnership

- The NJCM would like to know how the Netherlands Government, in the light of Article 16(1)(a), justifies the unequal treatment of heterosexual and lesbian couples with regard to marriage?

Authority over Children

- The NJCM would like the Netherlands Government to explain why parents have to share the parental authority after dissolution of the marriage by operation of law, while in most cases the mother bears the actual responsibility of rearing the child alone after divorce. This could also be contrary to the equality principle laid down in Article 16(1)(d) and (f).

Law of Names

- Can the government explain why it holds the opinion that the recently amended Law of Names does not contravene CEDAW? Under this law the married father has been given the decisive vote regarding the choice for the family name of the child.

Law of Parentage

- The NJCM would like to know why the interests of the mother are not weighed on an equal basis as the rights of the father and the child, vis-à-vis the recognition of a child.

Judicial Determination of Paternity

- The NJCM is wondering why a five year time limit has been established, for a mother to start proceedings for judicial determination of paternity.

Denial of Paternity

- The NJCM would like to know why Article 200 Book 1 Civil Code subs 3 disregards the fact that the child can also be conceived without the consent of the mother? Is the Netherlands Government prepared to modify the article in this respect?

Adoption of Minors in the Netherlands

- What is the meaning of the clause 'nothing to expect from the biological parent' in the proposed legislation on adoption? Why is this clause introduced simultaneously with the possibility of adoption by same sex couples?

Transgender Persons

- Why is a transgender person required to obtain a divorce in order to be apply for a legal change of sex status?

4.3 Resumen Ejecutivo y Lista de Preguntas (Español)

4.3.1 Resumen Ejecutivo

En este comentario, la NJCM (Sección neerlandesa de la Comisión Internacional de Juristas) ha expresado su preocupación sobre el proceso de estancamiento de la ejecución progresiva de la CEDCM en Los Países Bajos. En áreas tales como la participación de la mujer en la toma de decisiones, lucha contra la violencia sexual, y el pago equivalente por trabajo equivalente, las estadísticas muestran muy poco progreso. Sin embargo, en varias de estas áreas no se ha hecho mención de planes de acción comprensiva. Otra causa de preocupación es el incremento en la tendencia al “*mainstream*”. A pesar de que el énfasis creciente sobre la “diversidad” y “el cambio cultural” es loable en sí mismo, el decrecimiento simultáneo en -específicamente- la atención para asuntos de género es preocupante, tanto para mujeres pertenecientes a los grupos dominantes en la sociedad, como en particular para mujeres pertenecientes a grupos marginales. La NJCM es de la opinión que una aproximación de doble vía, es decir, tanto “*mainstreaming*” como atención específica para (grupos de) mujeres es indispensable.

4.3.2 Lista de Preguntas

Nota:

- pregunta en el segundo reporte
- pregunta en el tercer reporte

Comentarios Generales

Procedimientos Nacionales e Internacionales de Reporte (Artículo 18, Recomendación General No. 1):

- El Gobierno de Los Países Bajos declara que su segundo reporte periódico a CEDCM estuvo retrasado, dada la escala del procedimiento de reporte nacional al Parlamento (páginas 3 y 110). La NJCM quisiera conocer las razones por las cuales el procedimiento nacional tan sólo se inició en 1996 (página 4), mientras que el primer reporte nacional debía haber sido sometido desde 1995?

Principio de Igualdad (Último párrafo del preámbulo, Artículos 1-3, Artículo 5, Recomendación General No. 6):

- El Gobierno de Los Países Bajos declara su compromiso firme para lograr la ejecución completa de la Convención (páginas 5 y 110). La NJCM quisiera saber cómo se puede explicar que se dé prioridad a otros intereses sobre el principio de igualdad- sexual contenido en la Convención, incluso al “primer nivel” de discriminación directa?

Poder Judicial (Artículo 2 (c), Recomendación General No. 6):

- La NJCM quisiera saber porqué el programa –supuestamente exitoso- para familiarizar al poder judicial con las implicaciones y requisitos de la CEDCM no ha sido continuado? (Página 109).

Maquinaria Nacional y Política de Apoyo a la Emancipación (Recomendación General No. 6):

- La NJCM se pregunta si es la intención del Gobierno de Los Países Bajos evaluar su nueva política con relación a la organización y apoyo de la política de emancipación neerlandesa?

Ha desarrollado el Gobierno un plan comprensivo para asegurar atención específica para asuntos de género dentro de las áreas “*mainstream*”?

Implementación (Artículo 2)

- El tercer reporte menciona varias investigaciones que se han venido realizando o se van a realizar, pero en muchas áreas se carece de las políticas de implementación. Adicionalmente, en varias instancias los resultados de de las investigaciones realizadas no han sido explicados, ni se han delineado planes de seguimiento. La NJCM quisiera saber si los seguimientos simplemente han sido omitidos del reporte o si hasta ahora no existen?

Artículo 3 / Artículo 1

Política de derechos humanos

- La NJCM sugiere que la CEDCM invite al gobierno neerlandés a explicar su visión sobre una política de derechos humanos con sensibilidad sobre el género de acuerdo con el Artículo 3.

Persistencia de la Violencia contra la Mujer

- La NJCM quisiera saber qué medidas concretas pretende tomar el Gobierno de Los Países Bajos, con el fin de asegurar que las medidas para combatir la violencia contra la mujer sean firmemente incorporadas en la legislación y la política.
- En particular, La NJCM quisiera expresar su decepción clara por la falta de resultado alguno y las consecuencias de la política en el reporte de Los Países Bajos. Quisiera pedirle al Gobierno de Los Países Bajos que indique los resultados concretos de varias políticas y reportes, y presente una evaluación de su efectividad.

Política Coherente

- La política y las medidas legislativas referentes a la violencia sexual no parecen formar parte de una visión amplia, más coherente y comprensiva de como combatir la violencia contra la mujer. La NJCM quisiera saber si el gobierno de Gobierno de Los Países Bajos ha desarrollado el marco comprensivo a este respecto, de no ser así, si tiene la intención de hacerlo.
- La NJCM también quisiera saber que ha pasado con el “plan interdepartamental de acción para prevenir y combatir la violencia contra la mujer” desde que fue redactado en Enero de 1998.

Medidas legislativas (Vea también Artículo 2):

- La formulación género -neutral de todas las medidas legislativas en materia deviolencia, indicadas por el Gobierno de Los Países Bajos en su reporte (páginas 24- 25), es causa de preocupación (ver página 4 de este comentario). En particular, por la ausencia de mecanismos para generar atención específica para los problemas de la mujer. La NJCM quisiera saber cuales son las ventajas que esta aproximación género -neutral tiene según el Gobierno, y cómo propone el Gobierno garantizar la protección específica de la mujer.
- La NJCM quisiera saber también cual es el criterio que se ha utilizado, en este contexto de violencia contra la mujer, para distinguir las medidas de “nivel 2” de las de “nivel 3”.

Artículo 6

Víctimas del Tráfico de Mujeres

- La NJCM quisiera saber si el Gobierno neerlandés mantiene estadísticas del número de víctimas del tráfico de mujeres a quienes se les confiere un permiso de residencia con bases humanitarias antes y después de la introducción de dichos criterios, para hacer posible la evaluación de los efectos.
- La NJCM quisiera que confirmara que también bajo el nuevo Mensaje Interino una víctima del tráfico, que decide denunciar tiene derecho inmediata y automáticamente a un permiso de residencia temporal durante la duración del proceso, incluyendo el periodo pendiente de la decisión de iniciar o no la investigación criminal.
- La NJCM quisiera saber si, a la luz del principio del proceso justo, la provisión especial para testigos- víctimas también se extiende a testigos que quieran testificar a favor del acusado.

Abolición de la prohibición de burdeles (Vea también Artículo 11)

- La NJCM quisiera saber qué medidas pretende adoptar el Gobierno para asegurar la implementación plena y correcta de las políticas sobre tráfico de mujeres, especialmente de los derechos de las víctimas, según entre otros la Circular para Extranjeros?

Obligación de portar documentos de identificación (Vea también Artículo 2 y 3)

- La NJCM quisiera saber como evalúa el Gobierno neerlandés la obligación de portar documentos de identificación para (supuestas) prostitutas, a la luz del derecho a la privacidad y del artículo 3 de la Convención de la Mujer.

Exclusión de no-residentes de la UE

- La NJCM quisiera saber como justifica el Gobierno neerlandés la exclusión de prostitutas migrantes no de la UE, de la protección de las leyes laborales y civiles según lo provisto después de la abolición de la prohibición de los burdeles a prostitutas neerlandesas, especialmente a la luz de la prevención del tráfico de mujeres.

Artículo 7

Porcentaje de mujeres en la vida política y pública

- El Reporte de Los Países Bajos muestra que el porcentaje de mujeres en la vida política u pública es relativamente bajo y no tiende a crecer. La NJCM quisiera saber qué medidas tiene en mente el Gobierno para alterar esta situación?

Organismos Asesores

- La NJCM quisiera saber cuáles son las consecuencias de las nuevas políticas con relación a los organismos asesores sobre política en materias de emancipación y género? Tiene el Gobierno la voluntad de garantizar la atención para asuntos de género, en el trabajo de los organismos asesores, mediante la introducción de la obligación legal para estos de tomar esos asuntos de género en consideración, y/o mediante la inclusión sistemática de aspectos de género en sus solicitudes de asesoría?

Partidos Políticos que no admiten mujeres

- La NJCM quisiera saber la opinión del Comité en cuanto a si el Gobierno debe tomar medidas contra un partido político representado en el Parlamento, que no permita a las mujeres convertirse en miembros en base igualitaria con los hombres?

Artículo 8

Empleadas públicas internacionales

- La NJCM quisiera saber qué medidas concretas está tomando el Gobierno de Los Países Bajos para incrementar el número de mujeres representando al Gobierno a nivel internacional.

Nominaciones para posiciones internacionales

- La NJCM quisiera saber cómo selecciona el Gobierno de Los Países Bajos a las mujeres que van a representar al país a nivel internacional, y porque no hay más mujeres nominadas para los organismos de expertos?
- La NJCM quisiera saber si el Gobierno de Los Países Bajos apoya las nominaciones de otros países si se trata de una mujer, la cual llena, naturalmente, los requisitos dados en el tratado correspondiente.
- La NJCM también quisiera saber si el Gobierno de Los Países Bajos tiene la política de apoyar candidatos femeninos de otros países.

Artículo 9

Doble Nacionalidad

- La exclusión de la posibilidad de adquirir una segunda –doble- nacionalidad en el caso de matrimonio con un extranjero, aún cuando ha sido formulada según el criterio de género-neutral, es más desventajosa para las mujeres que para los hombres. Por qué el Gobierno de Los Países Bajos excluye la posibilidad de la doble nacionalidad en estos casos?

Reforma de la Ley de Extranjeros necesitada por la Ley de Vinculación

- Según el Artículo 12(2) de la Convención de la Mujer, el Gobierno de Los Países Bajos está obligado “a garantizar a la mujer servicios apropiados para el embarazo, el parto y el periodo posnatal, de índole gratuita cuando sea necesario (...)”. Dado que la Ley de Vinculación restringe el derecho de seguridad social, asistencia médica gratuita, etc., a los residentes extranjeros legales, las mujeres inmigrantes que no tienen permiso de residencia están *de hecho* impedidas para recibir asistencia médica gratuita durante y después de su embarazo. En la opinión de la NJCM, esto es contrario al significado de la obligación bajo el Artículo 12(2) de la Convención.
- La NJCM quisiera saber que medidas pretende adoptar el Gobierno neerlandés para asegurar que mujeres indocumentadas y/o mujeres en el proceso para obtener un permiso de residencia, tengan el derecho a servicios de apoyo apropiados, un refugio seguro y medios de subsistencia cuando se convierten en víctimas de violencia y/ o abuso (doméstico).

Mujeres con derecho dependiente de residencia

- El Gobierno de Los Países Bajos declara que “(...) cuando hay una evidencia *clara* de abuso y violencia (sexual o de otro tipo) conducente al fracaso de un matrimonio o relación esto *puede* constituir un fundamento humanitario para la expedición del permiso” (página 54) (énfasis adicionado). Que significa clara evidencia? En cuales casos el abuso y la violencia no conllevan a un permiso de residencia y por qué? ¿Cumple la política de los Países Bajos la Recomendación General No. 19 al respecto?
- La NJCM quisiera saber si el Gobierno neerlandés mantiene estadísticas sobre el número de permisos de residencia otorgados con bases humanitarias a mujeres que terminan la relación/matrimonio debido a la violencia doméstica dentro de 3 años, antes y después de la

introducción de las nuevas políticas establecidas en el “Memorando de Mujeres”(“Vrouwennota”), para hacer posible la evaluación de los efectos.

Refugiadas (Vea también Artículo 2(c) y (d) y Artículo 5):

- Contrario a la aseveración del Gobierno de Los Países Bajos de que el proceso de asilo es género-neutral (página 56), investigación ha mostrado que el proceso es bastante predispuesto, a pesar del hecho que el mismo procedimiento es aplicado sin tomar en cuenta el sexo. Aún cuando el Gobierno ha expedido varias instrucciones específicamente concernientes a las refugiadas, esas medidas parecen difícilmente adecuadas para tratar con la eliminación de los prejuicios de género y las ideas estereotipadas que influyen el procedimiento. Cómo pretende el Gobierno de Los Países Bajos reducir aún más esa influencia en el procedimiento de asilo?

Reunión familiar (Artículo 2)

- La NJCM quisiera saber si el Gobierno tiene la intención de investigar el efecto de los nuevos, agravados, criterios para la reunión familiar, en particular, en cuanto a su posible efecto indirectamente discriminatorio.

Migrantes laborales femeninas (Artículo 11)

- La NJCM quisiera saber si el Gobierno neerlandés tiene la intención de adoptar medidas para mejorar la posición de trabajadoras domésticas migrantes, incluyendo el acceso a permisos de trabajo legales y esquemas de regularización.

Artículo 10

Educación de las mujeres y niñas de minorías étnicas (Artículo 3):

- La NJCM está preocupada por el hecho de que la participación en la educación primaria, secundaria y avanzada de niñas y mujeres de minorías étnicas está quedándose atrás de la participación educacional de niñas y mujeres con orígenes holandeses.

Discriminación indirecta de madres solteras (Artículo 11(1)e)

- La NJCM quisiera saber que medidas pretende tomar el Gobierno neerlandés en relación con la discriminación indirecta de mujeres como madre soltera en la regulación de la educación en la Ley de Asistencia Nacional.

Artículo 11

Participación de la mujer en trabajo remunerado

- La NJCM quisiera saber si el Gobierno de Los Países Bajos tiene la intención de revisar la Ley de Horarios de Trabajo de 1996, la cual permite mayor flexibilidad en términos de su contribución a la facilitación de la combinación de trabajo remunerado y no remunerado. En particular, la NJCM está interesada en los efectos de la obligación para los empleadores de tomar en consideración las circunstancias personales de sus empleados.

Licencia Paterna

- La NJCM quisiera saber si el Gobierno de Los Países Bajos tiene la intención de estimular a los hombres a tomar la licencia paterna.

Cuidado no remunerado

- La NJCM quisiera saber si el Gobierno de Los Países Bajos ve la provisión de cuidado no remunerado como trabajo y, de ser así, qué medidas se han planeado para tratarla como tal. A este respecto, la NJCM quisiera saber que medidas planea tomar el Gobierno de Los Países Bajos para reparar los efectos perjudiciales de la Ley de Dependientes Sobrevivientes para mujeres de edad avanzada sin un pasado laboral. Si el Gobierno de Los Países Bajos no considera el cuidado no remunerado como trabajo, la NJCM quisiera saber qué medidas planea tomar para estimular a las mujeres que tienen una pareja con ingreso para encontrar trabajo, y qué medidas planea tomar para proveer esta clase de mujeres con trabajo.

Artículo 12

Exigencia de Reportar

- El reporte de Los Países Bajos es breve. Por qué el Gobierno no trata este asunto en más detalle, en particular explicando cómo pretende hacer el seguimiento en el gran número de recomendaciones resultantes del estudio sobre el significado del Artículo 12 para Los Países Bajos? (Ver Anexo Especial del reporte el Gobierno de Los Países Bajos).

Acceso a la atención médica para inmigrantes ilegales

- Puede explicar el Gobierno de Los Países Bajos por qué piensa –aparentemente- que las consecuencias perjudiciales de la Ley de Vinculación para la salud de emigrantes ilegales femeninas están, a pesar de todo, en conformidad con las obligaciones bajo el Artículo 12?
- El gobierno de los Países Bajos sugiere que hay un sistema adecuado para financiar el cuidado de la salud para inmigrantes ilegales en el caso de situaciones de peligro inminente de la vida. Sin embargo, en la práctica el acceso a cuidado médico (adecuado) en estas situaciones es problemático para inmigrantes ilegales. Cómo pretende mejorar esta situación el Gobierno de los Países Bajos?

Violencia Sexual (Artículo 3):

- Podría el Gobierno de los Países Bajos indicar en más detalle si la acción tomada para combatir la violencia sexual ha sido exitosa y con qué alcance? En particular, tiene el gobierno la intención de iniciar programas dirigidos a la prevención de la violencia sexual en instituciones de atención a la salud (mental)?

Mujeres de edad avanzada

- Porqué no contiene ninguna información sobre la posición de mujeres de edad avanzada en relación con el cuidado de la salud el reporte neerlandés? Esto es sorprendente dado el hecho que las mujeres como grupo viven más largo que los hombres, y generalmente están menos bien provistas financieramente.

Artículo 16

Distinciones basadas en razones de sexo en los derechos personales y de familia

- La NJCM está sorprendida por el declaración inicial de este capítulo que el tratamiento igualitario en el derecho de familia ya ha sido culminado. Cómo explica esto el Gobierno neerlandés, considerando que toda esta area del derecho aún esta dispuesta bajo lineamientos de género (p. ej. la ley d los nombres y del parentezco)? Qué significa, de acuerdo al Gobierno de los Países Bajos, el tratamiento igualitario?

Sociedad registrada

- La NJCM quisiera saber cómo el Gobierno de Los Países Bajos, a la luz del Artículo 16(1)(a), justifica el tratamiento desigual respecto al matrimonio de parejas heterosexuales y lesbianas?

Autoridad sobre los hijos

- La NJCM quisiera que el Gobierno de Los Países Bajos explicara por qué los padres deben compartir la patria potestad después de la disolución del matrimonio por efecto de ley, mientras que en la mayoría de los casos, la madre asume la responsabilidad real de dirigir al infante sola después del divorcio. Esto también podría ser contrario al principio de igualdad fijado en el Artículo 16(1)(d) y (f).

Ley de los Nombres

- Podría el gobierno explicar porqué sostiene la opinión que la, recientemente modificada, Ley de los Nombres no contraviene la CEDCM? Bajo esta ley se la ha conferido al padre casado el voto decisivo en cuanto a la elección del apellido del niño.

Ley de la Paternidad

- La NJCM quisiera saber porqué los intereses de la madre nos son sopesados de la misma manera que los derechos del padre y el niño, *vis-à-vis* el reconocimiento de un niño.

Determinación Judicial de la Paternidad

- La NJCM se pregunta porqué se ha establecido un término de cinco años, para que una madre inicie el proceso para la determinación judicial de la paternidad.

Negación de la Paternidad

- La NJCM quisiera saber porqué el Artículo 200 del Libro 1 del Código Civil subs. 3 ignora el hecho de que el niño también puede ser concebido sin el consentimiento de la madre? Está el Gobierno de Los Países Bajos preparado para modificar el artículo al respecto?

Adopción de Menores en Los Países Bajos

- Cual es el significado de la cláusula “nada que esperar del padre biológico” en la propuesta de legislación en materia de adopción? Porqué se introduce esta cláusula simultáneamente con la posibilidad de adopción por parejas del mismo sexo?

Personas transexuales

Porqué se requiere que la persona transexuales obtenga un divorcio para poder solicitar el cambio legal del condición sexual?