

Taking Women's Rights Seriously?

NGO shadow report
on the

Fourth Dutch Implementation Report on the
UN Convention on the Elimination of all Forms of
Discrimination against Women (CEDAW-UN Women's
Convention); 2000-2004

NJCM (Dutch Section of the International Commission of Jurists)
and
Netwerk VN-Vrouwenverdrag (Dutch CEDAW-Network)

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NGO Shadow report on the implementation of CEDAW in the Netherlands

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NGO shadow report on the Fourth Dutch Implementation Report on the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW-UN Women's Convention); 2000-2004

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Content

Content

Introduction	6
PART I: GENERAL REMARKS AND ANALYSIS	8
1. Shortcomings in the Dutch report	8
2. The role of the government in the emancipation process	10
3. The position of immigrant, refugee and minority women	12
4. Summary of part II	15
5. Conclusion: Not taking CEDAW-obligations seriously	26
PART II: REMARKS PER ARTICLE	27
Article 1, including gender based violence	27
a. The Structure of the Report	27
b. The definition of discrimination.....	27
c. Violence against women: lack of detailed information, in particular regarding minority women	27
d. Failure to follow-up on studies and reports on violence against women	28
e. Violence against women: gender mainstreaming or denial of its gendered character? ..	28
f. Domestic Violence: great efforts and concerns	29
g. Female Genital Mutilation and honour related crimes: concerns on participation and risk of stereotyping.....	30
h. Sexual harassment policies: more than establishing complaint procedures.....	31
i. Failure to provide protection against violence to all women, regardless of their residence status.....	32
j. Public safety	32
k. Sexual abuse of girls: Lack of information on the implementation of the National Action Plan to combat sexual abuse of children	33
l. Neglect of other forms of violence against women	33
Article 2, obligations to eliminate discrimination.....	34
a. Discrimination policies.....	34
b. Lack of specific policies to prevent and combat discrimination against immigrant, refugee and minority women.....	34
c. The Optional Protocol and the question of the direct effect of CEDAW.....	35
d. CEDAW: obligations to make an effort or to achieve a result?.....	35
e. The status of the studies on the implementation of CEDAW is unclear	35
f. Gender Impacts of policies and legislation are insufficiently assessed	35
g. CEDAW is hardly used in legal practice	36
h. No effective dissemination of CEDAW	36
i. All appropriate measures: soft measure are not sufficient	37
Article 3, development and advancement of women	38
a. Improving the position of women is no longer the aim; the example of ‘economic independence’	38
b. CEDAW obligations and foreign affairs	38
Article 4, temporary special measures.....	40
a. The policy on preferential treatment is not in line with article 4	40
Article 5, gender-stereotypes	41
a. Failure to assess laws and policies on underlying gender stereotypes	41
b. Reinforcement of stereotypes of immigrant, refugee and minority women	41
c. Lack of policies to address traditional role patterns and the ideology of motherhood....	42
Article 6, trafficking and forced prostitution.....	43

a. B9-regulation for victims of trafficking: shortcomings in implementation and protection	43
b. Lack of protection against trafficking of unaccompanied minor asylum seekers.....	45
c. Trafficking and forced prostitution among Dutch nationals	45
d. Exclusion of non-EU migrant sex workers from the legal sex sector.....	45
e. Other forms of trafficking	46
f. Lifting of the ban on brothels: lack of efforts to improve the position of prostitutes.....	46
Articles 7 and 8, political and public life	48
a. Stagnation of the percentage of women in top positions in public service and academia	48
b. Government does not meet its own targets with regard to state-appointed positions	48
c. Going to court: Reformed Political Party (SGP).....	49
d. No figures on the participation in political life of immigrant, refugee and minority women	50
e. International representation: targets for participation of women not achieved.....	50
Article 9, nationality and immigration law	51
a. Lack of statistics and the failure to draw up Gender Impact Assessments	51
b. Dependent residence right: improvements but not yet solved	51
c. New requirements for family reunification disproportionately affect women.....	52
d. Abandoned women: no possibility to return to the Netherlands.....	54
e. Serious critique of HRW on the procedure with regard to female traumatised asylum seekers	54
f. No recognition of sexual violence as a ground for asylum.....	55
g. Unwillingness to incorporate the UNHCR gender guidelines	56
h. Obstacles for the participation of immigrant, refugee and minority women	56
i. Linkage Act: no protection for undocumented women.....	57
Article 10, education	59
a. Shortcomings of the report	59
b. No comprehensive set of measures to achieve the main objectives of the government ..	59
c. Representation and performance at different school levels.....	59
d. The segregation in education is alarming.....	61
e. Discrimination of minority girls in teaching practice.....	62
f. No information on adult education and vocational training	62
g. Participation of women is no longer an objective in the policy on ‘the knowledge society’	63
h. No information on gender education.....	63
i. No equal representation of male and female personnel in education.....	63
j. Time for sport, a good example of gender mainstreaming	63
k. Executive members within sports federations; the government sits back.....	64
Articles 11 and 13, employment and economic life	65
a. The report does not cover all aspects of economic and social life	65
b. Almost no information disaggregated by sex and ethnicity.....	65
c. The high unemployment rate of women requires measures, with special attention to minority women and women re-entering the labour market	65
d. Discrimination in the workplace: analysis and enforcement needed	66
e. The pay-gap between men and women remains unchanged	67
f. Full time work: 32 hours or 40 hours? Effects on division of care.....	67
g. The new life course saving system does not contribute to the division of paid and unpaid work.....	68
h. The new Childcare Act caused a decrease in the use of childcare.....	68
i. No real long uninterrupted school day	69
j. Overcoming the glass ceiling: wishful thinking instead of measures	69

Content

k. The segregation of the labour market is stubborn	70
l. Lack of efforts to improve the position of sex workers	70
m. Female labour migrants and working permits.....	71
n. No labour rights for domestic workers and au pairs	72
o. Termination of maternity allowance of independent entrepreneurs.....	73
p. Major changes in social security, but no gender impact assessments	73
q. Concerns about the financial position of elderly women	75
r. Women face accumulation of poverty risks.....	75
Article 12, health	77
a. No information disaggregated by sex and ethnicity and no objectives	77
b. Serious concerns about the effects of the new health-insurance system.....	77
c. New Law on Social Support has negative effects for women.....	78
d. The health of immigrant, refugee and minority women.....	78
e. The Linkage Act limits the access to health for undocumented women	78
f. Sexual and reproductive rights: access to contraception limited	79
g. No statistic information on HIV/AIDS and other sexual transmissible diseases	79
h. The closure of tolerance zones for street prostitution and the right to health	80
Article 14, rural areas	81
a. Structure of the report; information, objectives and measures	81
b. Studies and experiments are not appropriate measures.....	81
c. Only the international policy has mainstreamed gender	81
d. Labour participation of women lower in rural areas	81
e. Participation of women in decision making in rural interest is low	82
f. Social and cultural infrastructure in rural areas	82
Article 15, equality for the law	83
a. Law on Names: see article 16.....	83
Article 16, family life	84
a. The gap between desired equality and factual inequality.....	84
b. The legislation on parental access does not acknowledge the interests of the caring parent	85
c. Intimate partner violence plays hardly any role in family law	85
d. Law on Names still not in accordance with CEDAW.....	86
e. Sham marriages	86
f. Dependent residence status, family reunification and abandoned women: see article 9 ..	87
g. The Mudawwanah: problems for Moroccan women in the Netherlands	87
Bibliography	88

Introduction

In this shadow report, Dutch NGOs comment on the Fourth Dutch Implementation Report on the UN Convention on the Elimination of all Forms of Discrimination against Women and give their opinion on the implementation of the Convention in the Netherlands since 2001, when the previous Concluding Comments of the CEDAW Committee were issued. This introduction describes the making of the shadow report and the relation with the Beijing process and the NGO Beijing +10 report. Furthermore, it raises some issues with regard to the Dutch Antilles and contains an explanation of the structure of this shadow report.

The making of this shadow report

This NGO shadow report, which is presented to the CEDAW Committee by the NJCM (Dutch Section of the International Commission of Jurists) and the Netwerk VN-Vrouwenverdrag (Dutch CEDAW-Network) has been brought about with the input and efforts of a wide variety of organisations and individuals.

Late 2004, the Ministry of Social Affairs granted the request of the Humanist Committee on Human Rights (HOM), as representative of the Dutch CEDAW Network, to fund the writing of this shadow report, including a number of meetings with NGOs and experts and the presentation of the report in New York. Without this funding, this NGO shadow report probably would not have been written, and surely would not have been written in this form, and presented in New York.

After the government report was published in January 2005, a multi track policy was followed to collect input for the shadow report. Both within the NJCM and the CEDAW Network the major themes of the government report were discussed, which led to the choice of the topics of the more analytical chapters of the shadow report. Apart from that, a questionnaire based upon the ABA/CEELI CEDAW Assessment Tool was sent to more than 80 NGOs. Almost 20 NGOs responded. In addition, other sources for the shadow report were used, such as the Beijing + 10 NGO shadow report and other publications. In November 2005 the main themes of the shadow report and the topics 'the role of the government in the emancipation process (articles 2-4)', 'the position of migrant, refugee and minority women' and 'employment and economic life (article 11)' were discussed during an expert-meeting. On the basis of this, a preliminary draft of the shadow report was written. This draft was discussed both within the NJCM and the CEDAW Network, and sent for comments to several experts. The revised draft was then sent to other NGOs for subscription. The presentation of the final report took place on June 1st in a broad NGO meeting.

Most of the organisational work on the shadow report and the NGO meetings has been done by the Humanist Committee on Human Rights, one of the partners in the CEDAW Network.

Relation with the Beijing +10 process

In March 2005, the Dutch Beijing +10 NGO report was published. As the aim of both the Beijing process and CEDAW is the elimination of discrimination against women and the advancement of women, there is a lot of overlap. CEDAW and the Beijing process can strengthen each other. However, different from the Beijing Plan for Action, CEDAW is legally binding for the states parties. Therefore, the focus of this shadow report is on the obligations of the government. Nevertheless, the Dutch Beijing +10 NGO report provided valuable information, also for assessing the implementation of CEDAW. This shadow report refers to the Dutch Beijing +10 NGO report frequently; however we recommend to read the whole report, which is available at <http://www.beijing10.nl/beijing10/schaduwrapportage-eng.html>.

The Dutch Antilles

The Dutch government report does not include any information on the implementation of CEDAW on the Dutch Antilles. Early 2005 the government informed the CEDAW Network that there would be a

Introduction

separate report on the Antilles, which was ready, but had to be translated. Until now, the report on the Dutch Antilles has not been published on the website of CEDAW, nor on that of the Dutch or the Antillean government. The Humanist Committee on Human Rights made the effort to contact the largest women's NGO on the Dutch Antilles, the Caribbean Association for Feminist Research and Action (CAFRA), but without result. Therefore, this NGO report does not contain information on the implementation of CEDAW on the Dutch Antilles. However, the Dutch NGOs want to stress the need for such a report, and a shadow report of Antillean NGOs, and hope that these reports will be submitted before the constructive dialogue on the government report takes place.

Structure of the shadow report

This shadow report consists of two parts. The first part opens with a number of remarks on the structure of the government report (chapter 1), followed by an analysis of Dutch emancipation policies, including the emancipation of migrant, refugee and minority women, and of the general attitude of the Dutch government towards women's rights and its obligations under CEDAW (chapter 2 and 3). It then continues with a summary of the main points presented in part II (chapter 4), followed by some concluding remarks of the Dutch NGOs with regard to the question: Does the Dutch government take its CEDAW obligations seriously? (chapter 5).

In the second part, the various articles of CEDAW and their implementation in the Netherlands are discussed one by one.

PART I: GENERAL REMARKS AND ANALYSIS

1. Shortcomings in the Dutch report

Structure of the report

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

This conceptual approach is not found in this 4th government report. The government report lacks a clear structure. It appears as if the government collected descriptions of projects on women's issues, and consequently put them one after another. Any analysis of the Dutch situation in light of the various CEDAW obligations (like in the appreciated conceptual approach) is missing. Moreover, policy objectives and results are hardly mentioned, descriptions of the factual situation are incomplete, measures are not linked with objectives, etc.

This incomplete character of the report makes it difficult to evaluate whether or not the Dutch government meets its obligations under CEDAW. Therefore, a number of shortcomings will repeatedly be mentioned at different places and articles, such as the lack of disaggregated statistical information, the absence of objectives and the fact that no attention is paid to the results or effects of measures and policies. The reason behind this repetitiveness is that the information concerned is essential to be able to judge the efforts and results of the Dutch government in implementing CEDAW.

In its report, the Dutch government does not follow the CEDAW articles strictly. Sometimes this is understandable, like combining immigration law with laws on nationality, sometimes it is more difficult to follow (why combine sports with education?). However, more serious is the fact that some articles and topics are not covered by the state report at all. For example, the government does not report on article 13 (except from the part on sports, which is combined with education, art. 10). Moreover, the government does not report on articles 2-4, which we consider to be a serious omission. Some of the information that could or should be presented under these articles can be found in the chapter on the Dutch emancipation policy and under article 1. However, by not presenting it under article 2-4, the government misses the conceptual three-leveled approach that is inherent to CEDAW. In this shadow report, we mainly follow the structure used by the Dutch government; in some cases, however, we follow the structure of CEDAW.

Facts and figures

The Dutch report contains few facts and figures on the factual position of women with regard to the CEDAW topics. Most chapters do not contain a description of the factual situation, nor a comparison of the present situation with the situation in the past. In as far as (statistical) situation is given, it is not disaggregated by sex and ethnicity.

Apart from the general lack of data, the facts and figures that are presented by the government are sometimes incorrect and often incomplete or outdated, even when more recent and more detailed information is available. For example, in November 2004, the two-yearly 'emancipation monitor' which contains a wealth detailed information and statistics, was published¹. It is presumed that the statistical information in the monitor was available to the government on forehand. However, the information is not included in the government report. Similarly, the annual reports of the Dutch Commission on Equal Treatment contain detailed information on the caselaw of the Commission,

¹ Wil Portegijs, Annemarie Boelens en Linda Oltshoorn: *Emancipatiemonitor 2004*, Sociaal Cultureel Planbureau en Centraal Bureau voor de Statistiek, November 2004.

Shortcomings in the Dutch report

disaggregated by discrimination ground. It is therefore difficult to understand why the government presents the overall figures of the cases brought for Commission, rather than the cases on sex-discrimination.

Appendixes

The Dutch government attaches two appendixes to its report: the summary of an in-depth study on the significance of article 5a CEDAW for the elimination of structural gender discrimination, and a report on the position of female foreign nationals in Dutch immigration law and policies in relation to CEDAW. However, in its report, the government pays no attention to the content of both studies. It is fully unclear whether or not the government agrees with the conclusions of the reports or is willing to implement the recommendations in its policies.

The Dutch NGOs are concerned that this attitude of the Dutch government is exemplary: A range of studies are presented as measures, but the outcomes and recommendations are rarely implemented in regular policies (see also the comments on the various articles).

2. The role of the government in the emancipation process

Two track policy

The Dutch NGOs fully subscribe the two track policy that is described by the Dutch government: on the one hand, specific emancipation policies that promote change, place new issues on the agenda, propose new instruments and stimulate strategic alliances with social partners and non governmental organisations on the basis of an overall vision, and on the other hand, policies that integrate a gender perspective in all areas of regular policies (page 5, government report).

However, the Dutch NGOs conclude that the government is mainly paying lip service to this two track policy. The coordinating and initiating role of the state regarding emancipation has been (almost) abandoned, instruments are hardly used, NGOs have disappeared after funding by the government was cut off, gender mainstreaming is failing², and emancipation policies of the government have narrowed down to the integration of migrant, refugee and minority women (see for this topic chapter 3).

The coordinating and initiating role of the government no longer exists

Despite its lip service to the two track policy, the Dutch government makes clear that a specific emancipation policy by the national government is no longer part of its policy. The coordinating minister refers to the other ministries by using the magic word ‘gender mainstreaming’, whereas other ministers and departments on their turn refer to local authorities, more or less privatised institutions and other organisations with another magic word: ‘decentralisation’. The department for the Coordination of Emancipation Policy not only abandoned its coordinating role³, also its role of stimulator and initiator is little developed in practice.

Under CEDAW, however, it is the government which is responsible for the elimination of discrimination of women, for the improvement and advancement of women, and for the combat of gender stereotypes. The Dutch government presents emancipation as a collective responsibility of government, local authorities and (non governmental) organisations, and seems satisfied with the statement that the responsibility for gender is mainstreamed and decentralised.

Of course local authorities, institutions and other organisations are needed in the process, but it has to be clear that the main responsibility lays with the government. According to the Dutch NGOs this means the government has to set objectives, and to ensure these objectives are achieved. Other organisations and local governments can be called in, but it can not be left to them alone to achieve the set objectives. It is not sufficient to say emancipation is decentralised and mainstreamed, to design grant schemes and to facilitate projects. The government has to monitor whether the objectives are achieved by local authorities and projects. If this is not the case, it is up to the government to take additional measures.

CEDAW obligations go even further. In addition to the responsibility for the achievement of its own objectives, the government has to take all appropriate measures to eliminate all forms of discrimination by any person, organisation or enterprise (art 2. e CEDAW). In the view of the Dutch NGOs this means the government has to monitor the results and effects of measures and policies of local governments, organisations and enterprises. It also means the government has to take additional measures if gender equality, improvement of the position of women and combating gender stereotypes is not achieved by and within local governments, organisations and enterprises.

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

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

The role of the government in the emancipation process

These obligations are insufficiently acknowledged by the Dutch government. The government uses decentralisation and division of tasks as an excuse not to be accountable for achieving the CEDAW objectives.

Dwindling support to and alliances with non-governmental organisations

Within the two track policy, strategic alliances with NGOs are of crucial importance. However, in the period 2002-2004, the Dutch government cut off the structural funding of many NGOs, such as the Clara Wichmann Institute, Expertise Centre on Women and Law, the Mr. A. de Graaf Foundation, Institute on Prostitution Issues, and the Women's Alliance, an umbrella organisation of women NGOs. These organisations all closed in 2004. This did not only mean a loss of expertise on women's issues, but also of a network with both grassroots women's organisations and professionals in the field of women and law. Overall, the non-governmental field is severely weakened. The government no longer funds organisations, it only funds projects within the specific scope of its own priorities⁴. Although in some areas the government is or has been working together with NGOs and other institutions (a.o. on domestic violence, see art. 1), in other areas this cooperation is minimal (for example with organisations of immigrant, refugee and minority women).

Gender mainstreaming: the disappearance of emancipation

Since 1998 gender mainstreaming is official governmental policy. Up to 2002 this policy was accompanied by an interdepartmental plan of action, in which goals were set, on which all departments had to report annually. Although the government states that goal-setting has proved to be a useful instrument for achieving gender mainstreaming (state report, p. 6), this method was not continued after 2002. The 2001 government position paper contained the principles of gender mainstreaming, but targets and obligatory structures and mechanisms to make it work were missing. The ultimate goal of this position paper – to achieve gender mainstreaming within the ministries and the inter-ministerial organisation by the end of 2006 – will not be achieved. In 2004 an Inspection Commission on Emancipation was established, with the task to examine all ministries on gendermainstreaming. In February 2006, the commission came with its interim reports⁵. The main conclusion of the overall interim report held: 'In summary, the commission has to conclude that the situation is worrying. Often, there is no adequate internal infrastructure to bring the gender dimensions of the policies sufficiently under the attention of policymakers of the departments and to integrate these genderdimensions in their general policies, as is requested by the government position paper. In light of the time and efforts it took within most departments to find people who are able to provide information in the area of emancipation policies and gender mainstreaming, and to cooperate with the formal inspection, it is doubtful whether emancipation has any priority'.

This conclusion confirms the observation of the Dutch NGOs that, although the intentions might have been good, the policy of gender mainstreaming functions as the 'disappearance trick' for which experts and NGOs have warned.

Gender mainstreaming does not work without strong, obligatory instruments and mechanisms, a good national machinery including a coordinating and initiating department, an interdepartmental infrastructure, as well as an 'outer peel' of critical NGOs.

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

⁵ *Dat moet echt beter. Emancipatiebeleid en gender mainstreaming bij de rijksoverheid in 2005. Voorlopig beeld.* Visitatiecommissie Emancipatie, februari 2006.

3. The position of immigrant, refugee and minority women

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

Lack of statistics on the *de facto* situation of immigrant, refugee and minority women

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

In its report the government mentions the ACVZ-report on the implementation of CEDAW in relation to immigration law and policies (e.g. on p. 3).⁶ The Dutch NGOs welcome this initiative. However, the ACVZ-report does not contain statistics. In fact, the ACVZ observes, referring to the Concluding Observations of the CEDAW-Committee, that the available statistics fail to provide sufficient insight on the impact of law and policies and urges the government to collect such information. Finally, it should be noted that the ACVZ-report is limited to immigrant, refugee and minority women in relation to the immigration law and does not cover the position of established immigrant, refugee and minority women, the majority of which have the Dutch nationality.

Emancipation or integration?

In its report (p. 22 -23) the government mentions that ‘women and girls from ethnic minority groups still lag behind in terms of empowerment and integration’. It is illustrative that the government speaks about ‘integration’, rather than ‘emancipation’. In addition, questions can be posed with regard to the (white, dominant) standard that is used to measure the ‘lagging behind’ of immigrant, refugee and minority women. However, at the same time the government considers the improvement of their present disadvantaged situation to a great extent to be ‘their own responsibility’. According to the Dutch NGOs this does not relieve the government from its responsibility to create and enhance the conditions under which women can take ‘their responsibility’ by removing obstacles in the structure of society.⁷ Moreover, by considering improvement in their current disadvantaged situation to be mainly their own responsibility, the government denies the existence of structural power differences and pretends that all citizens – male or female, majority or minority, white or coloured - have an equal voice. ‘Own responsibility’ appears to be used as a justification for the government to withdraw from its own responsibility in actively developing and implementing emancipation policies.⁸

⁶ Advisory Board on Immigration Affairs (ACVZ). *The UN Women’s Treaty in relation to the position of migrant women in Dutch immigration law and policies*, The Hague 2002. A summary is attached as appendix to the State report.

⁷ See also *State of the Art and Mapping of Competences in the Netherlands*, Mieke Verloo and Ilse van Lamoen, www.Mageeq.net.

⁸ See also *Have the expectations of Beijing been realised?*, Dutch NGO shadow report Beijing +10, p. 14.

The position of immigrant, refugee and minority women

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

Rather, while at the one hand stressing the own responsibility of women, at the other hand, a range of legal and other measures are taken which make it more difficult for immigrant, refugee and minority women to emancipate and gain an independent position. A few of the examples are:

- The requirement in the new Integration Act for migrant women to mandatory follow an (expensive) ‘integration course’ and to pass an ‘integration exam’ in order to qualify for an independent residence permit instead of offering free and easy accessible language courses and good and accessible childcare facilities. As a result the acquirement of an independent residence permit for migrant women without an own income is made dependent on the willingness of their husband/partner to cooperate (see art. 1 and 9);
- The requirement for migrant victims of domestic violence to press charges against their husband/partner in order to qualify for an independent residence permit, whereas it is generally known that only 10-12% of all victims of domestic violence – regardless of their ethnic background or residence status - is willing and able to do so (see art. 9);
- The introduction of (even) more restrictive requirements for family reunification, justified among other reasons with the argument of ‘preventing forced marriages’. In particular the raising of the income requirement disproportionately affects women. In general it will be more difficult for women to meet the income requirement, given their generally weaker position on the labour market, but this is even stronger so for women from ethnic minorities and women with young children. This seriously affects their right to family life, which, according to the ACVZ, might amount to a violation of article 16 (1) under a and d CEDAW⁹ (see art. 9).

Moreover, migrant women, in particular Muslim women, are increasingly confronted with discrimination and stereotyping. Women who wear a headscarf are frequently refused as trainee and discriminated against in the labour market, which is one of the reasons why their labour participation lags behind (see also art. 2, 10 and 11). Moreover, in the political debate they are systematically presented as ‘backwards’, ‘suppressed’ and ‘in need of liberation’. The argument of sex equality and integration is, for example, used to negatively depict the wearing of a head scarf as a symbol of repression that should be combated, no matter the opinion of women themselves and the variety of motives women can have to do so. This seriously restricts the space of Muslim women to emancipate in their own way, within being forced to distance themselves from their community and their religion. It is even not unthinkable that, given the present xenophobic climate in the Netherlands, women choose to wear a head scarf as an act of protest, as a symbol of solidarity with their community and as a rejection of the general hostile attitude toward the Islam.¹⁰

Rather than acting against these stereotypes, the government tends to reinforce them by narrowing down its emancipation policies to ‘migrant women’, thus suggesting that discrimination of women is typically a problem of migrant communities and ethnic minorities, and by using the stereotype of migrant women as passive victims to take measures which negatively affect their rights. Examples are the use of the argument of forced marriages to further restrict family reunification, the argument of integration to impose mandatory ‘integration’ courses and the argument of trafficking in women to exclude migrant prostitutes from legally working in the sex industry (see also art. 5 and 9). In this way, women’s rights are misused to defend very different interests, notably that of a restrictive

⁹ Report ACVZ, p. 18.

¹⁰ See also editorial *NJCM Bulletin* No. 2, 2006.

NGO Shadow report on the implementation of CEDAW in the Netherlands

immigration policy. A true emancipation policy would do the reverse: strengthen the rights of women, create space for women to emancipate in their own way and empower women to do so.

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

4. Summary of part II

This chapter provides a summary of part II of this shadow report. In part II we discuss the articles of CEDAW one by one and present our comments and questions with regard to the government report. The summary does not cover all the topics and questions discussed in part II, but only lists the key points of concern: those topics on which the Dutch NGOs are of the opinion that the government does not comply with its obligations under CEDAW, as well as those issues on which the Dutch government did not follow the previous Concluding Comments of the CEDAW Committee (2001).

Various articles

Lack of detailed information, disaggregated by sex and ethnicity

Despite the fact that the CEDAW Committee urged the Dutch government ‘to provide in its next report detailed information, including statistics disaggregated by sex and ethnicity, on the implementation of the Convention with respect to different ethnic and minority groups resident in the territory of the State party’, this information is largely absent in the government report. Such information is indispensable to be able to monitor the situation of immigrant, refugee and minority women and evaluate the impact of policies.

Article 1

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

The Dutch NGOs are extremely concerned about the policy of the Dutch government to deliberately formulate its policies on domestic violence, sexual violence and sexual harassment gender neutral, thus denying the structural and gendered character of these forms of violence. They are interested to learn how the government will ensure that gender issues remain visible within gender neutralised policies.

Lack of free legal assistance to victims of domestic violence

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

Failure to provide undocumented women with protection against gender based violence

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

Article 2

The nature of CEDAW obligations: strong or weak?

Within the Dutch legal system, individual citizens can directly invoke and have enforced rights deriving from international conventions before national courts. The notion that (provisions of) CEDAW give rise to rights of individual citizens is also underlying the CEDAW Optional Protocol. However, both in its policy document *Een veilig land waar vrouwen willen wonen*,¹¹ and in the SGP

¹¹ ‘A safe country where women want to live’, Ministry of Social Affairs, December 2002.

law case¹², the Dutch government states that (provisions of) CEDAW can not have direct effect. In the same policy document, the government states that CEDAW obligations are obligations 'to make an effort', instead of obligations to achieve the elimination of all forms of discrimination. The Dutch NGOs disagree with both opinions of the government, and are very interested to learn the opinion of the CEDAW Committee on these topics.

Dissemination of CEDAW

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

Article 2 and 5

Insufficient assessment of the gender impact of policies and legislation Although both article 2f and article 5a of CEDAW oblige the government to assess existing and new laws and policies with regard to their impact on the position of women as well as on the existence of underlying stereotypes, the Dutch government hardly conducts Gender Impact Assessments. The failure to conduct Gender Impact Assessments on particular laws is discussed under the articles concerned. We refer, for example, to article 9 (no Gender Impact Assessments on the effects of the introduction of stricter requirements for family reunification and on the impact of the new Integration Act), article 11 (no Gender Impact Assessments on new social security legislation) and article 12 (no Gender Impact Assessment on two major law changes). Moreover, the recommendations of the few Gender Impact Assessments that were conducted are consequently not implemented by the government (see for example art. 11: the life course saving scheme).

Article 3

The improvement of the position of women seems no longer a real aim

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

Do CEDAW obligations extend to foreign policies?

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

Article 4

Different approach of temporary special measures by CEDAW and EU

The government's policy on 'preferential treatment' follows the strict, symmetric approach of the European Court of Justice, instead of the CEDAW principles on temporary special measures as laid

¹² Case against the Reformed Political Party (SGP) for excluding women from its membership, see art. 7-8, under c.

Summary of part II

down in article 4-1 and General Recommendation 25. The Dutch NGOs would highly appreciate the CEDAW Committee providing some guidance to the Dutch government on how to cope with the different obligations regarding temporary special measures under CEDAW on the one hand, and EU-legislation on the other.

In addition, the Dutch NGOs would like to know what measures the Dutch government will take to meet the obligations of CEDAW on temporary special measures as laid down in article 4 and General Recommendation 25. They are also interested to learn which steps the Dutch government will take to achieve compliance of EU-legislation with CEDAW in this respect.

Article 5

Government policies reinforce stereotyping of immigrant, refugee and minority women, in particular Muslim women

The Dutch NGOs are concerned about the current negative stereotyping of immigrant, refugee and minority women, in particular Muslim women. Rather than acting against this, the repressive measures taken by the government under the heading of 'integration and participation', along with public statements of politicians, reinforce these stereotypes. For example, the narrowing down of emancipation policies by the government to minority women - rather than all women in the Netherlands - reinforces stereotypes about their 'backwardness'. Stereotypes are also used to negatively affect the rights of immigrant, refugee and minority women. Examples are the stereotype of female migrants as (potential) victims of domestic violence, forced marriages and trafficking in women, which are used as arguments to further restrict their right to family reunification respectively to exclude them from legally working in the sex industry with the attached protection by labour and civil law.

Article 6

Lack of protection of victims of trafficking in women after the conclusion of the criminal case

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

Lack of protection against trafficking in women of unaccompanied minor asylum seekers

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

Categorical exclusion of migrant prostitutes from the legal sex sector and the attached (labour law) protection

The Dutch NGOs share the concern of the CEDAW Committee about the effects of the lifting of the ban on brothels on the position of undocumented migrant prostitutes and victims of trafficking.

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

Article 7 and 8

Stagnation of the number of women in top positions

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

Exclusion of women from the Reformed Political Party (SGP)

In its consideration of the previous report the Committee concludes that the existence of a political party (SGP) which excludes women from membership constitutes a violation of article 7 and urges the state to take adequate measures. Following the continuing failure of the state to do so, a number of NGOs brought the case to court. In September 2005 the court held that by not taking adequate measures the state acted in violation with its obligations under article 7 CEDAW; moreover, it held that by funding the SGP the state actively contributed to the continuing existence of an unlawful situation; and ordered the state to immediately stop funding the SGP. The Dutch Minister of Internal Affairs has decided to appeal against this judgment of the district court.

Article 9

Independent residence permit for victims of domestic violence: improvements but not yet solved

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

New requirements for family reunification disproportionately affect women

Summary of part II

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

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

The Dutch NGOs would like to know if the government is willing to implement the recommendations of the Commission PaVEM in order to prevent that women who are intentionally abandoned by their husband in their home country lose their residence permit and cannot return to the Netherlands. They are also interested to know if the government disposes over figures with regard to the scale of the problem.

Human Rights Watch seriously criticises the Dutch procedures with regard to female traumatised asylum seekers

General asylum policies hold that a second asylum request is only taken into consideration when there are 'new facts', i.e. facts that were not and could not be known during the first procedure. For women who are not able or willing to talk about their experience of sexual violence during the first interview, this means that they have no possibility to submit a second application. Following the critique of Human Rights Watch that the Dutch policy is too formal, hardly leaves any space for traumatised female refugees who were not able to speak about their traumas in the first procedure, and risks violation of the principle of *non-refoulement*, the government slightly adapted its policy. In the case of a repeated asylum request the INS now has the possibility to take into account new aspects if it is plausible that these aspects were not put forward by the asylum seeker because of the existence of a trauma. However, a judicial review is still not possible. The Dutch NGOs are interested to know in how many cases in which sexual violence plays a role, female asylum seekers are referred to the accelerated 48 hours-procedure; in how many cases the INS reconsiders a repeated asylum request of female asylum seekers because of the existence of trauma's; and in how many cases this leads to the granting of refugee status. They would also like to know if the government intends to adapt the law to allow for judicial review of the decision not to take a repeated asylum procedure into consideration.

No recognition of sexual violence as a ground for asylum

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

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

Under the new Integration Act all immigrants are obliged to follow a mandatory 'integration course' followed by a mandatory 'integration test'. Immigrants have to pay the course and the exam by themselves, which can run up to 6000 Euro, though under certain conditions (partial) compensation of the costs is possible for specific groups, including specific groups of women. The new requirement disproportionately affects women since generally they earn less than men, whereas women without an independent income are made dependent on their partner's willingness to pay for the course and the exam. Moreover, women have to pass the 'integration test' before they qualify for an independent residence permit. The Dutch NGOs are interested to know if the government is aware of the negative effects the new Integration Act can have for women and if it is willing to make a Gender Impact Assessment on the impact of the law.

Article 10

No comprehensive set of measures to achieve equal representation in education

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

No measures to combat the segregation in education

In all forms of secondary education, very few girls (less than 5%) choose technical profiles, while boys hardly take up care and welfare profiles. At the moment, the government does not take appropriate measures to change this. The Dutch NGOs are interested in the opinion of the Committee whether the failure to take measures can be considered not only a violation of article 10 of CEDAW, but also of article 5, which obliges the government to take all appropriate measures to combat existing stereotyped roles for men and women. They are also interested to know which measures the Dutch government aims to take to combat this segregation within secondary education, and how it will monitor the results.

Discrimination of minority girls in teaching practice

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

No equal representation of male and female personnel in education

The Dutch NGOs would like to know how, given its obligations under article 5a of the Convention, the Dutch government evaluates the fact that most teachers at primary schools are women, while the majority of headmasters are men. The Dutch NGOs are also interested to learn what measures the government will take to change this situation. Moreover, they would like to receive statistical information on university staff, disaggregated by gender and ethnicity, and with attention to the number of working days and salaries. Furthermore, they are interested to learn the targets of the government regarding equal representation of men and women at high academic posts, including the measures it aims to take to achieve these targets. In particular the Dutch NGOs would like to know whether the Dutch government is willing to prolong the (apparently successful) Aspasia program up to the point where the targets will be achieved.

Article 11

The high unemployment rate of women requires measures, with special attention to minority women and women re-entering the labour market

During the past years, the position of women in general, and more specific the position of black, migrant and refugee women on the labour market worsened. CEDAW requires effective measures of the government to stop this development, when necessary by taking temporary special measures. The government policies of the last years obviously have not been effective. The Dutch NGOs would like to learn which measures, including temporary special measures, the government aims to take to achieve equal employment of women, and in particular of immigrant, refugee and minority women, and of women re-entering the labour market.

Still no equal pay

Summary of part II

The figures on equal pay as presented in the government report are rather old (2000), and not disaggregated by sex and ethnicity. More recent figures show no improvements. Current measures are mainly 'soft' measures: research, development of instruments and awareness rising, and are not effective. The Dutch NGOs want to know what (hard) measures the Dutch government will take to overcome the resistant pay gap within a limited period.

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

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

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

The new Childcare Act causes a decrease in the use of childcare

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

No long uninterrupted school days

Instead of ensuring a long, uninterrupted school day, as required by CEDAW in its previous Concluding Comments, the government developed plans regarding the care for children before, in between and after school-hours. From August 2006, schools will be responsible for providing care at noon. Although this is an improvement, it is not sufficient. School hours will not change, which means that the standard remains that children go home for lunch, and staying over is an exception. Besides that, the costs will probably rise (while no compensation for these costs is available), which will make the threshold to make use of this provision even higher. There are no quality standards for the stay-over lunch break at schools. According to the Dutch NGOs, ensuring a long interrupted school day entails that the regular school day is from approximately 8.30 a.m. until 5 p.m., and that all children have a program of education, sports and cultural activities during this time. Before and after those hours additional care should be provided for parents who need it.

Segregation of the labour market

The Dutch government does not report on this topic. Although the CEDAW Committee urges the government in its 2001 Concluding Observations to increase its efforts to eliminate stereotypes relating to traditional areas of employment for women, the government did not take any measures. Since 1996 hardly any changes are registered in the top 10 of male occupations (building sector, technical sector), of which 99% of the workers is male. Neither in the top 10 of female occupations (care and health sector and administrative work). Figures of 2002 show that in the health sector, almost 80% of the employees were woman. In occupations which require higher education participation of men and women is more equal. Given this persistent segregation of the labour market, increasing efforts by the government are needed

No rights for migrant domestic workers and au pairs

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

Lack of efforts to improve the position of sex workers

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

Termination of maternity allowance of independent entrepreneurs

In 2004, the Dutch government blocked access to the Invalidity Insurance (Self-employed Persons) Act; part of this Act was a financial allowance related to pregnancy and maternity for female entrepreneurs. Unlike the government states in its report to CEDAW, the government did not consider how to arrange such payments after the Act's repeal. During the Parliamentary debate on the repeal of the Act, the government stated that article 11-2 of CEDAW does not imply an obligation to maintain a pregnancy and maternity allowance for female entrepreneurs. In the Senate, the government stated that CEDAW obligations do not extend beyond the obligations of ILO conventions No. 102 and 128, that the State therefore is not obliged to protect all their (working) citizens, and that, accordingly, some groups may be excluded. The Dutch NGOs challenge this. According to them, CEDAW obliges the government 'to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances' (art 11-2). No exception is made for female entrepreneurs. Such exception would, in their view, be in contradiction with the main aim of CEDAW: the elimination of all forms of discrimination against (all) women. They are also of the opinion that that article 11-2 requires a result (introduction of leave with pay or benefits), and does not merely contain an obligation to make an effort. However, even then: where the convention requires introduction of maternity leave with pay or benefits, it is clear that it prohibits terminating an existing provision to that aim. The Dutch NGOs would be interested to learn the opinion of the CEDAW Committee whether the termination of the maternity allowance for independent entrepreneurs constitutes a violation of article 11-2 of CEDAW.

Major changes in social security law, but no Gender Impact Assessments

Several social security laws were adapted in recent years. No Gender Impact Assessments are conducted regarding those changes, although some changes affect women more than men. The Dutch NGOs would like to know if the Dutch government recognises the gender-specific effects of the changes in the social security system, in particular regarding the Unemployment Act, the Invalidity Insurance Act and the Work and Welfare Act. They are also interested to learn what measures the government will take to overcome the negative effects on women.

Concerns about the financial position of elderly women

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

Article 12

Concerns about the effects of the new health-insurance system

The health insurance system in the Netherlands recently totally reformed. No Gender Impact Assessment was carried out with regard to this reform. However, NGOs are concerned that the new system will have special negative effects on people with long time low incomes. Within this group, women are overrepresented. The Dutch NGOs would like the Dutch government to monitor the gender impacts of the new health system, with special attention to single mothers and elderly women, and to report on this impacts in its next report.

New Law on Social Support has negative effects for women

In 2007 the new Act on Social Support will enter into force. The Gender Impact Assessment on this act concluded that the law has negative effects for women, both as care-providers and as care-receivers. The government did not adjust the (draft) law after this Gender Impact Assessment. The Dutch NGOs consider pushing the law, while not taking measures to prevent or overcome the negative effects on both the health and the working conditions and possibilities of women to be a violation of CEDAW obligations under article 12. The Dutch NGOs would like to know if the Dutch government is willing to take measures to ensure the new Act on Social Support does not weaken the position of women, and, if so, what measures it intends to take? If not, the Dutch NGOs would be interested to learn how the CEDAW Committee evaluates this unwillingness in light of the obligations under CEDAW.

Linkage Act limits the access to health for undocumented women

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

Sexual and reproductive rights: access to contraception limited

In 2004 the government terminated the compensation of the costs of contraception for women over 21 by the Public Health Service. From 2003 on, Dutch NGO's have argued that this measure, which affects only women and limits their access to contraception and by doing so their sexual and

reproductive freedom, is a violation of CEDAW. The Dutch NGOs would be interested to know whether the CEDAW Committee considers the termination of the compensation of the costs of contraception in line with the obligations under CEDAW. The Dutch NGOs would also like the government to start research on the effects of the termination and the exclusion of contraception from the basic health insurance policy, to report on these effects in the next State report, and to reconsider the measure when negative effects for women occur.

Article 16

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

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

Intimate partner violence and parental access

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

Law on Names still not in accordance with CEDAW

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

Summary of part II

The Mudawwanah: problems for Moroccan women in the Netherlands

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

5. Conclusion: Not taking CEDAW-obligations seriously

The Dutch NGOs conclude that the Dutch government is not taking its CEDAW obligations seriously. In summary, they base their conclusion on the following grounds:

1. The Dutch government did not follow the recommendations of CEDAW in its 2001 Concluding Observations (see chapter 4, where most topics on which the government did not follow the recommendations of CEDAW are summarised).
2. In its report, the government does not account for (not) achieving objectives related to CEDAW obligations; it merely sums up projects and policies which are somewhat related to the position of women (see chapter 1, shortcomings in the Dutch report).
3. The government does not acknowledge that it is the national government which is accountable for achieving gender-equality, to improve the position of women and to combat gender stereotypes, no matter decentralisation or gender mainstreaming (see chapter 2).
4. The Dutch government holds the (legally incorrect) opinion that the CEDAW convention has no direct effect, and can not be applied in national court (see article 2).
5. The government wrongly assumes that CEDAW obligations are obligations to make an effort, instead of obligations to achieve the elimination of all forms of discrimination against women (see article 2).
6. The Dutch government does not implement the conclusions and recommendations of studies on the implementation of CEDAW in its policies (see article 2).
7. The Dutch government hardly assesses its (existing and intended) policies and legislation on gender impacts; recommendations of the few conducted gender impact assessments are not followed (see article 2 and the various thematic articles)
8. The Dutch government does not disseminate CEDAW and related documents (see article 2).
9. The Dutch government does not assess policies and legislation on gender stereotypes and structural discrimination against women (see article 5 a).
10. On many topics, the measures of the Dutch government, and the results achieved by these measures, do fully comply with CEDAW obligations. The government does not acknowledge these shortcomings, and does not indicate which measures it will take to overcome them (see chapter 4, and Part II, articles 1-16).

PART II: REMARKS PER ARTICLE

Article 1, including gender based violence

a. The Structure of the Report

The Dutch government does not report on the implementation of articles 2-4 of the Convention. However, some of the topics that belong under those articles are placed under article 1. In this shadow-report we do not follow the order of the State report. The paragraphs on ‘discrimination and equal treatment’, the Optional Protocol and the in-depth studies are put under article 2; the paragraphs on international policy mainly under article 3. Integration and emancipation is discussed in part I and in several paragraphs in part II, mainly under article 9. Violence against women is discussed in this chapter under article 1.

b. The definition of discrimination

Article 1 CEDAW contains a wide definition of the concept of discrimination against women, which is not limited to equal treatment for the law (formal equality) but also encompasses *de-facto* equality (material equality). The latter is not recognised by the government. For example, policies with regard to alimony and parental access after a divorce ignore the factual inequality that exists between men and women in marriage and family relations (see art. 16).

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

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

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

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

As the government indicates, the study *The prevention and combating of domestic violence against women* (2000¹³) gives a detailed and thorough overview of the Dutch policy and legislation in the light of the CEDAW obligations. However, the government fails to present the conclusions and recommendations of this study to the CEDAW Committee, along with the measures the government has taken or will take in response to those recommendations. *That* a study has been carried out, and *that* the government reacted on it, is good to know, but what really matters are the *outcomes* of the study, *which measures* the government has taken with regard to its recommendations and what the *results* of these measures are. The same goes for the AIV report *Violence against women: legal developments* (2000)¹⁴: it is good that the study has been carried out and that the government reacted on it, but more important are the outcomes of the study and the measures the government took and will take in response. Again, the same goes for the Motion on violence against women.¹⁵ The government states that in its reaction it gave a broad overview of the measures taken by the Dutch government to combat sexual violence. It is exactly this broad overview of measures, along with an overview of the results of these measures, which is missing in the present government report.

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

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

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

- violence against women again becomes individualised as a personal problem of the women concerned against which she needs protection, rather than as a structural problem which is embedded in society
- violence against women is simplified to a matter of cultural or religious backgrounds (other than western or Christian)
- violence against white women is denied and violence against immigrant, refugee and minority women is trivialised.

Moreover, in practice the mainstreaming of policies on gender based violence – coordinated by the ministry of Justice¹⁶ – has meant that the focus is mainly on criminal measures and not on prevention.

¹³ *The prevention and combating of violence against women*, Netherlands Institute of Human Rights, April 2000.

¹⁴ *Violence Against Women: legal developments*, Report no. 18, Advisory Council on International Affairs, February 2001.

¹⁵ Motion on violence against women, submitted by MP Hirsi Ali, in response to the policy document ‘A safe country where women want to live’, state report, p. 14.

¹⁶ The coordination of emancipation policies used to be a task of the Department for Coordination of

Article 1, including violence against women

Violence against women hardly figures in emancipation- documents of other ministries and if so, it is limited to women from ethnic minorities.

Also when a policy is gender mainstreamed, it is important to collect data, disaggregated by sex (and ethnicity, age, and other relevant factors). Only then it is possible to evaluate and monitor the policy and its gender impacts, and to dispose over the information which is needed to take the appropriate measures to combat discrimination.

f. Domestic Violence: great efforts and concerns

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

In the period 2000-2005 the Dutch government made a great effort in combating domestic violence. A major interdepartmental project was launched and carried out in cooperation with various institutions and NGOs. The Dutch government certainly deserves appreciation for these efforts and for the results which are achieved. The Dutch NGOs, however, are concerned whether the attention for domestic violence will last after all the projects (carried out or funded by the government) are finished. The policies on combating domestic violence need to be implemented in regular policies; the budget which is needed to carry out effective policies has to be secured. Also when combating domestic violence is delegated to the local authorities, it is still the government that is responsible for meeting its obligations under CEDAW, apart from its responsibility for legal measures and for the activities of the police and public prosecutors. Therefore, the government should ensure that those who have to carry out the policies, in particular the local authorities and NGOs, have sufficient financial means to do so.

As for the figures mentioned in the state report (p.15), research among the police shows that 80% of the victims of domestic violence are women and 98% of the perpetrators men.¹⁷

Sanctions imposed in cases of domestic violence

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

Lack of free legal assistance to victims of domestic violence

Not all measures that were recommended in the policy document '*Private Violence - a Public Matter*'(2002)¹⁸ have been implemented. In particular, a number of measures that aimed at strengthening the position of victims in the legal process - which is an important part of empowerment of victims - have been dropped. In the Dutch legal system, suspects (under certain conditions) are entitled to free legal aid. Victims are not. The subsidised legal aid system does not provide for legal aid to victims in criminal proceedings. Following a number of successful pilot projects, the policy document included a proposal to provide free legal advice by a lawyer to victims of domestic violence for two hours, after which victims could make use of the regular legal aid system. As domestic violence can have many legal consequences (regarding criminal proceedings, family law, housing rights, aliens law), it is important that victims are informed about their rights and the legal possibilities. Free legal advice by specialised lawyers therefore constitutes an important provision. The Dutch NGOs also wonder how the failure to provide free legal aid to victims of gender related

Emancipation Policies (DCE). In 2004 this coordination task has been abolished. See chapter 2.

¹⁷ See http://www.politie.nl/nieuws/nieuws/landelijk_32_199315.asp.

¹⁸ *Private Violence – a Public Matte. A Memorandum on the joint approach to domestic violence*, Parliamentary papers, House of Representatives 2001-2002, 28345, no. 1

violence relates to article 2 (c) of the Convention which obliges to establish legal protection of the rights of women on an equal basis with men and to ensure the effective protection of women against any act of discrimination.

Risks attached to the shift in focus from criminal procedures to the (enforced) treatment of perpetrators of domestic violence

Recently increased attention is paid to the treatment of perpetrators of domestic violence. Although in general this is a positive development, there are a number of risks attached to this change in focus. In cases of domestic violence, the prosecutor has the possibility to conditionally drop the case under the condition that the offender subjects himself to treatment. In that case the case does not go to court, thus it will not be proved that the violence indeed took place. Apart from the fact that this means that the wife concerned has no possibility to obtain compensation for damages, this can also give complications in the ensuing family-law procedures. There are for instances cases known that the alleged perpetrator claimed not to have to pay alimony to his wife because she supposedly would have pressed 'false charges' against him on abuse.

Impact of the dependent residence right on the protection against sexual violence of migrant women

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

Domestic violence and family law is discussed under article 16.

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

Concerns on participation of minority groups in the development and implementation of policies against female genital mutilation

The Dutch NGOs appreciate the efforts of the government to combat female genital mutilation. However, many of the measures are taken with little consultation and even less participation of the groups concerned. A critique therefore is the lack of involvement of the groups concerned in the development, implementation and evaluation of the policies. Such involvement would increase the effectiveness of measures and would ensure that they are tailor-made and proportional.

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

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

Need to avoid stereotyping and stigmatising of ethnic minorities

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

Need for more expertise and lack of safe houses

Police, service providers and schools have an important function in identifying the risk of honour killings. However, organisations that deal with (the threat) of honour killings generally do not have sufficient expertise. More expertise should therefore be developed. Moreover, there is still a lack of shelters and opportunities for assistance geared to this specific type of violence.

h. Sexual harassment policies: more than establishing complaint procedures

The government report mainly describes whether (and how many) complaint procedures are in place in the different fields concerned. In that respect, it must be noted that employers often still don't take the need to establish complaint procedures seriously enough. Although employers are legally obliged to take measures to prevent sexual harassment, in particular small and medium sized companies maintain that they do not have the financial means to do so. Still, in its presentation of the latest report on sexual intimidation at the workplace (2004)¹⁹ the only measure the government announced to address this problem is the collection and publication of *best practices* on its website, rather than making use of its legal power to oblige employers to introduce complaint procedures and to impose fines to employers who do not meet their obligations.

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

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

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

¹⁹ *Evaluation of the Working Conditions Act (Arbo-wet) concerning undesirable manners at the workplace*, Letter of the Secretary of State for Social Affairs to the Parliament of 10 December 2004.

in which they are extremely dependent on others, such as in detention centres for undocumented migrants or female prisoners. The Dutch NGOs would like to know which measures the government intends to take in these areas.

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

The Dutch NGOs want to stress that also when the responsibility for the provision of women's shelters²⁰ is decentralised to the local governments, as described in the state report, the government itself still remains responsible for meeting its obligations under CEDAW.

Apart from further research on demand and supply, measures should be taken to ensure that shelters are accessible for *all* women and their children who need a safe place to stay. It is to be praised that the government reserved extra money (€4 mln.) for extending the capacity of shelters. However, the Dutch NGOs would like to know how many extra beds are and will be financed through this extra money, and how this number is related to the actual shortage and the capacity that is needed to provide shelter for all women and children who need it.

One of the obstacles particularly migrant women meet in getting access to a shelter is the fact that many shelters are hesitant to receive women without a secured residence permit. Even when a larger group of migrant victims of domestic violence now is entitled to an independent residence permit (see art. 9), procedures may still take considerable time, during which it can be difficult to get a housing permit or access to social security. Not all women's shelter are familiar with the legislation and possibilities, and some of the shelters avoid problems by denying access to women without an independent residence permit, or by limiting the number of migrant women they take in. This problem can not be solved solely by expanding the capacity of the shelters; it requires measures on different levels like streamlining the procedures of the immigration department, the local housing and social security authorities and improving the information for shelters and the women concerned.

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

j. Public safety

Lack of information on the implementation of the outcomes of the gender impact assessment on special planning

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

²⁰ The title of the paragraph in the State report is 'women's refugees', but the text makes clear that it is not about asylum seekers, but about shelters.

k. Sexual abuse of girls²¹: Lack of information on the implementation of the National Action Plan to combat sexual abuse of children

Since the National Action Plan to combat sexual abuse of children has been completed in 2002 with a final report, it might be expected that the government reported about the conclusions of this report, the outcomes of the projects, the objectives that are set for the coming period, the measures that will be taken to implement the results of the projects and to achieve the objectives, etcetera. However, the government report only mentions the existence of a final report. That is not enough.

Indications exist that in recent years sexual violence and involuntary sex between youngsters has become more common. The report 'Sex under 25'²² shows that 18% of the girls experienced some form of sexual coercion, and 4% of the boys. Several cases of rape of young girls by groups of young boys (including the 'boy friend' of the girl) were brought before court in recent years. In all those cases the boys, and sometimes also the girls, expressed rather stereotype ideas about the sexual roles of women and men; they did not define their own behaviour as rape. The Dutch NGOs are very concerned about this development and wonder which measures the Dutch government is planning to take. Apart from bringing cases to court, in particular – and even more important – preventive measures are needed along with research on the causes of this behaviour.

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

l. Neglect of other forms of violence against women

Along with the increased attention for domestic violence and 'culturally legitimised violence'²³ the attention for the already longer known forms of violence against women, such as rape and assault seems to decrease. An example is the fact that projects on legal aid for victims of sexual violence, which were very successful, were terminated for financial reasons instead of implemented in regular policies, as was originally planned (see also the paragraph on domestic violence). Another example is the shift in focus within the police force to domestic violence, trafficking, honour related crimes and child pornography and the formation of special units around these topics. At the same time, traditional vice-units often are split up in special units, or abolished as such. The Dutch NGOs are of the opinion that continuing and structural attention is needed to maintain what has been achieved in this area, for instance in police training.

²¹ See for the topic 'lover boys': art. 6 (c).

²² 'Sex under 25', Rutgers Nisso Groep, 2005

²³ The Dutch NGOs deem the term 'culturally legitimised violence' misleading in that sense that it suggests that other – and in the context of Dutch society better known - forms of violence against women, such as domestic violence, are not culturally legitimised and/or culturally embedded.

Article 2, obligations to eliminate discrimination

a. Discrimination policies

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

In practice discrimination of women is still widespread. The Equal Treatment Commission, for example, still receives a considerable number of complaints about discrimination with regard to pregnancy (15% of its judgements on discrimination on the basis of sex) and about unequal payment (20% of its judgments on discrimination on the basis of sex).²⁴ In this context it is remarkable that the government report mentions the figures of the Dutch Equal Treatment Commission (CGB) without disaggregating them by discrimination ground.

Another fact which is not mentioned by the government is, as noted by the CGB, that judgments regarding discrimination on the basis of sex, are less often followed by the courts than CGB-judgements regarding other discrimination grounds (see shadow report CGB).

Finally, it is important to mention that the Equal Treatment Commission has a limited mandate: it does not have the mandate to critically examine government policies on equal treatment as, for example, the Equal Treatment Commission in the Antilles has.

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

A problem which is not mentioned in the government report is the increasing discrimination of migrant Muslim women who wear a headscarf, both at schools and at the labour market. A considerable number of the complaints submitted to the Dutch Equal Treatment Commission (CGB) concern this form of discrimination. In 2004, for example, 60% of the complaints about discrimination on the ground of religion concerned discrimination of Muslim women wearing a headscarf.

Although in general educational institutions are not allowed to prohibit the wearing of headscarves, over the last years schools increasingly issue such a prohibition in cases where this is not allowed. This seriously hinders this group of Muslim women to follow the education of their choice. Research shows that discrimination is also one of the reasons why the labour participation of migrant women is lagging behind.²⁵ It is for example more difficult for Muslim women wearing a headscarf to find a place as trainee and employers frequently refuse job applicants wearing a headscarf. As a consequence, Muslim women have *de facto* no equal right on work.

This increasing discrimination of Muslim women is connected to the general political climate. Significantly, the present debate about freedom of religion seems to be fought out – literally – over the heads of women. In this respect, the Dutch NGOs also refer to the comments of the Dutch Equal Treatment Commission on the State Report²⁶.

²⁴ For more information we refer to the comments of the Equal Treatment Commission on the government report.

²⁵ *Ethnic minorities on the labour market*, Ministry of Social Affairs and Employment, 2005.

²⁶ *Comments on the fourth Dutch report on the implementation of CEDAW*, Dutch Equal Treatment Commission, February 2006.

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

The Dutch NGOs highly appreciate the contribution of the Dutch government in the realisation of the Optional Protocol. Underlying the Optional Protocol is the notion that (provisions of) CEDAW give rise to rights of individual citizens. Within the Dutch legal system, individuals can directly invoke and have enforced rights deriving from international conventions before national courts. The Dutch NGOs would like to know how the Dutch government sees the relation between the individual right of complaint as established by the Optional Protocol, and its opinion that (provisions of) CEDAW can not have direct effect, as expressed in the government policy paper *Een veilig land waar vrouwen willen wonen*²⁷ and the case against the SGP²⁸.

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

In its reaction on two studies on violence against women²⁹, the government states that CEDAW obligations are obligations to *make an effort*, in stead of obligations to *achieve* the elimination of all forms of discrimination. The Dutch NGOs disagree on this, and would like to know the opinion of the CEDAW Committee on this topic.

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

In its report the government mentions several in-depth studies on the content and scope of CEDAW which it commissioned (p. 11) and attaches the summary of two studies³⁰. It should be noted, however, that the majority of the studies mentioned are rather old (1996-1998). Moreover, the report does not indicate what consequences the government has given (or is willing to give) to the conclusions and recommendations of these studies. Does the fact, for example, that the summaries of two studies are attached to the state report, mean that the government subscribes the conclusions of these studies and is committed to implement them? For instance, does the government subscribe the recommendation of the Advisory Board on Immigration Affairs to submit the policy changes with regard to family reunification (higher income criteria, higher fees for applicants' integration courses and the requirement that applicants pay for these courses themselves) to a Gender Impact Assessment before any final decisions are made (state report, p. 89)? If so, why has this not been done before the changes were put into effect? (See also Art. 9.)

Similar questions can be asked with regard to the in depth study on article 5a (see article 5).

f. Gender Impacts of policies and legislation are insufficiently assessed

²⁷ *A saafe country where women want to live, policy response to the report 'The prevention and combat of violence against women, Netherlands Institute on Human Rights) and the 'Advise on violence against women' of the Advisory Board on International Affairs, Ministry of Social Affairs and Employment, December 2002.*

²⁸ See under articles 7 and 8 and the Concluding Observations of CEDAW with regard to the SGP.

²⁹ *A safe country where women want to live, 2002*

³⁰ *Towards Different Law and Public Policy. The significance of Article 5a Cedaw for the elimination of structural gender discrimination, R. Holtmaat, 2004; The UN Women's Convention in relation to the position of female foreign nationals in Dutch immigration law and policies, Advisory Board on Immigration Affairs (ACVZ), 2002.*

CEDAW obliges the government to make sure its legislation and policies are in compliance with the three main objectives of CEDAW (de jure and de facto equality, improvement of the position of women and combat of gender stereotypes), and with the specific obligations. This implies the obligation to conduct gender impact assessments on (both existing and intended) legislation and policies which might have effect on the position of women³¹. Although the Dutch government states that gender impact assessments might be useful, it is very reluctant to conduct such assessments. On some major changes in law and policies, no gender impact assessment was conducted (for example the Integration Act and the policies and laws on family reintegration, see article 9; the Linkage Act (article 9), changes in social security (article 11) and the health insurance system (see article 12). On other topics assessments were conducted after pressure of the parliament, but the recommendations of this assessments were not implemented in legislation and policies (life course saving system, see art. 11; Law on Social Support, see article 12).

The availability of the instrument is not sufficient. The government should take structural measures within its system to ensure that gender impact assessments are conducted in an early stage of the processes of legislation and policy making, and to ensure that the recommendations of gender impact assessments are considered seriously.

Not only intended policies and legislation should be subjected to gender impact assessments, also existing laws, policies and practices should be evaluated regularly on its gender effects.

g. CEDAW is hardly used in legal practice

According to the Dutch law system, provisions of international treaties that grant rights to individuals can be called in before national courts (see also under c: optional protocol). However, CEDAW is rarely used by lawyers, and even fewer by judges. The government should take measures to make lawyers and judges more familiar with CEDAW, and encourage them to use the convention in court. Just as important, the government should stop sending the message that CEDAW has no direct effect (see optional protocol).

h. No effective dissemination of CEDAW

In its previous concluding observations, CEDAW requested ‘the wide dissemination in the Netherlands, including in Aruba and the Netherlands Antilles, of the present concluding comments in order to make the people of the Netherlands, in particular governmental administrators and politicians, aware of the steps that have been taken to ensure de jure and de facto equality for women and of the further steps that are required in this regard. It requests the government to continue to disseminate widely, in particular to women’s and human rights organisations, the Convention and its Optional Protocol, the Committee’s general recommendations, the Beijing Declaration and Platform for Action and the results of the twenty-third special session of the General Assembly, entitled “Women 2000: gender equality, development and peace in the twenty-first century”. Apart from funding a brochure on the optional protocol, the Dutch government did not conduct any activities to disseminate the documents as requested. The knowledge of the CEDAW obligations amongst governmental administrators and politicians is nearly absent. For NGOs it is difficult to find the right information. Above that important documents like the general recommendations and the concluding observations are not translated into Dutch.

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

³¹ This obligation derives from articles 2f and 5a, see R. Holtmaat, 2004.

i. All appropriate measures: soft measure are not sufficient

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

Article 3, development and advancement of women

a. Improving the position of women is no longer the aim; the example of ‘economic independence’.

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

This can be illustrated by the example of economic independence.

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

Since a few years, however, ‘economic independence’ is used in a totally different way. It is no longer a condition for the advancement and emancipation of women, but a means for the economic policy of the government. It is viewed from the perspective of society: the economic interest of the society, with its aging population, requires women to work. Independence now means independence from the state: having a social security allowance is no longer seen as economic independence. The effects of this different approach to economic independence can be found within the tax-system and social security, where the individualisation is on its way back and the family-approach is returning. It also means that women with a welfare allowance now are the main target group for the reintegration on the labour market; they have to become independent from state allowance. Also, re-valuation and re-balancing of care tasks are no longer connected to economic independence.

The change of the content of ‘economic independence’ can be confusing. One may think that by aiming at economic independence of women, the government aims at the advancement of women, while in reality the economic interests of society are the motive.

b. CEDAW obligations and foreign affairs

As the Dutch government describes in its report (under article 1), the Netherlands have always been very active in promoting women’s rights on international level, in particular regarding reproductive rights, violence against women, female genital mutilation and honour related crimes. The Dutch NGOs appreciate this efforts. The government seems however to take its own responsibilities in this regard less serious. Research by the ministry of Foreign Affairs shows, for example, that only half of its human rights projects that should have a gender focus, really has a gender focus integrated in the project or programme. Also the fact that a mere 11,5% of the ‘heads of mission’ are women, does not give a message to the international community that the Netherlands are serious about the advancement of women.

Article 3, development and advancement of women

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

The policy on development cooperation is based on the sector approach: the Dutch government finances sectors instead of projects. This means the receiving government mainly decides where the Dutch money goes. The Dutch government has less power to label certain amounts for the advancement and development of women. Besides that, the Dutch government does no longer formulate gender objectives for its development cooperation policies. The same goes for the foreign policies as a whole: also other policies then development cooperation have effects on the position of women in other countries (for example policies on trade, conflicts, migration). The lack of gender data on the one hand, and the lack of gender objectives on the other, makes it difficult to monitor the effects of the Dutch foreign policies on the position and rights of women. Gender impact assessments (on forehand, and by means of evaluation) should be used to determine the gender effects of policies. Dutch Embassies have their own budgets, and can play an important role in the advancement and development of women in foreign countries. The Dutch government does not require gender activities and gender objectives from the embassies. Whether embassies are active in this area, depends from the personal dedication of the embassy personnel. The embassy can ask for a gender expert. At 20 of the 150 embassies a gender-expert is working. Although a combination of a Dutch and a local gender expert has proved to be the most effective, the number of Dutch gender experts working at the embassies is declining.

Article 4, temporary special measures

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

In May 2005 the government sent its policy document regarding 'preferential treatment' to parliament. Although the government states that article 4-1 on temporary special measures of the Convention is involved in the policy, no attention is paid to General Recommendation 25 of CEDAW, nor to the totally different approach of CEDAW compared to that of the European Court of Justice. Where CEDAW requires the elimination of the discrimination of women, as disadvantaged group, the European Court of Justice judged that discrimination on the ground of sex is prohibited. These different approaches have major consequences for the acceptance of temporary special measures. According to the European Court of Justice such measures are discriminating, can only be tolerated under strict conditions, and never may exclude the (non-disadvantaged) group, while CEDAW might require special temporary measures in order to improve the position of the disadvantaged group (women). In its policy, the Dutch government follows the 'European way', without discussion. Even on the topic of discrimination on the ground of race or ethnicity, or discrimination on more than one ground (f.e. sex and race) the government anticipates on not yet existing judgements of the European Court. As all European Countries are CEDAW State parties, it may be expected that the European legislation is in compliance with CEDAW. Also the Dutch government is obliged to take the necessary steps to achieve such compliance.

Article 5, gender-stereotypes

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

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

The government refers in its report to the in-depth study on the implementation of article 5³² and even attaches it to its report. However, no attention is paid to the main conclusion of the study, notably that article 5 CEDAW contains two major obligations. Firstly the obligation to actively combat stereotype image making of men and women, for example in the media and education. Secondly, the obligation to assess legislation and government policies for the existence of underlying gender stereotypes. This second obligation is totally ignored by the government in its report. The government also ignores the more specific outcomes of the study. Chapter 15 of the study gives indications and starting points to check whether structural gender discrimination is occurring; in chapter 16 this is elaborated into a model to check the new Integration Act for structural gender discrimination³³. It might be expected that the government either uses this model to assess its policies and legislation, or indicates why it will not do so. By explicitly presenting a study on the implementation of CEDAW on the one hand, but completely ignoring the outcomes of the study on the other hand, the government shows that it does not take women's rights seriously.

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

Although the state report mentions several measures to combat general stereotypes of men and women, current policies are remarkably careless in reinforcing stereotypes about women from ethnic minorities, in particular Muslim women. Especially Muslim women tend to be presented, both in the media and in the political debate, as uneducated and oppressed and in need of 'liberation' by others.³⁴ Rather than acting against such negative stereotypes, the repressive measures taken by the government under the heading of 'integration and participation',³⁵ along with public statements of politicians,³⁶ reinforce these stereotypes. For example, the narrowing down of emancipation policies by the government to 'migrant' women - rather than all women in the Netherlands - reinforces stereotypes about their 'backwardness': according to the minister concerned the emancipation of Dutch women was completed.³⁷ At the same time, 'migrant' women are treated as a homogenous group, thus denying the differences among the various groups of immigrant, refugee and minority women, among other factors related to their migration history as labour, family, political or ex-colonial migrants, and their experiences in both their country of origin and the Netherlands. By treating them as if they were one homogenous group, large groups of women are excluded and made invisible. More fundamentally, policies are developed without including the women concerned in the decision-making process. In this

³² *Towards Different Law and Public Policy. The significance of Article 5a CEDAW for the elimination of structural gender discrimination*, Rikki Holtmaat, Research undertaken for the Ministry of Social Affairs and Employment of the Netherlands, May 2004.

³³ See for comments on the Integration Act also article 9.

³⁴ See e.g. 'How safe is the right to safety?', Ellen-Rose Kambel, *Nemesis* No. 1, 2003.

³⁵ See for a description of these policies article 9.

³⁶ The stereotype of Muslim women as victims 'who need to be liberated from their suppressive culture' is often used in the political debate to underline the supposed superiority of the emancipated and enlightened West, compared to the supposed 'backwardness' of the Islam, thus denying that discrimination of women and domestic violence are as much a feature of native Dutch society.

³⁷ Later this remark was nuanced.

context it needs mentioning that women, including immigrant, refugee and minority women, have and still are predominantly emancipating and participating in society on their own strength. NGOs and self-organisations play an important role in this process, which is insufficiently recognised by the government.

Stereotypes are also used to negatively affect the rights of immigrant, refugee and minority women. Examples are the stereotype of female migrants as (potential) victims of trafficking in women, domestic violence and forced marriages which are used as arguments to respectively exclude them from legally working in the sex industry and to further restrict family reunification.³⁸ Another example is the dominant representation of migrant wives as ‘import brides’, whereas migrant husbands are predominantly seen as ‘men who take their chances’ to come to the Netherlands. In both cases women are pictured as passive instruments in the hands of others, whereas men are pictured as active actors. Also in the case of asylum seekers women are predominantly seen as passive followers of their male partners, rather than as autonomous migrants. Research shows, for example, that officials tend to expect that the motives of female asylum seekers are dependent of men³⁹.

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

An area in which stereotypes are still extremely tenacious is the division of roles between men and women in the private domain. It is true that the labour participation of women has increased during the nineties: in 2004 65 % of the women had a paid job of minimum one hour per week compared to 53 % in 1995. However, they are hardly represented in the top of the public domain (see article 7-8). One reason is that the beliefs on who is responsible for the household and the care for children do not change accordingly. The dominant ideology still is that mothers should care for their children themselves, at least during a few days a week. It is considered pitiful when children go to childcare for more than three days a week, and mothers are ‘blamed’ for it. Two thirds of the women in the Netherlands start working fewer hours or quit their job when they get their first child. The more children they have, the fewer hours they work. Less than 10 % of the working women with children have a fulltime job, compared to 90% of the working men, no matter if they have children or not. The ‘one and a half’ working model, in which the man has a full time job and the woman works half-time seems to have become the norm. The average salary of women is almost half as low as that of men. This can not be explained from lower education levels of women: more women than men go to the university and they perform better.⁴⁰ The government does not take measures to combat the dominant ideology of motherhood. On the contrary, also the government seems satisfied with a part time labour participation of women. For a further discussion of women and employment, and the division of work and care, we refer to article 7-8 and article 11.

³⁸ See article 9.

³⁹ Spijkerboer, *The UN Women’s Treaty and Dutch Immigration Law*, 2002, p. 24.

⁴⁰ Heleen Mees, ‘Women should finally get to work’, *NRC Handelsblad*, 21 January 2006.

Article 6, trafficking and forced prostitution

a. B9-regulation for victims of trafficking: shortcomings in implementation and protection

Since 1987 the Netherlands has a special chapter in the immigration law on victims of trafficking (B9-regulation). Under the B9-regulation (alleged) victims are granted a reflection period of 3 months to decide whether or not they want to press charges. If they press charges they are entitled to a temporary residence permit during criminal proceedings. In 2005 a number of improvements have taken place: the chapter now applies to victims of trafficking for all purposes (including domestic labour) and victims are allowed to work during the temporary staying permit. However, despite these improvements serious problems still exist with regard to, on the one hand, the implementation of the B9-regulation and, on the other hand, structural shortcomings in the regulation itself. According to estimates of the National Rapporteur on Trafficking in Human Beings only 5% of the victims reports to the police/presses charges.⁴¹ This indicates that the present regulation insufficiently meets the needs and interests of the victims.

Continuing shortcomings in the implementation of the B9-regulation

The correct implementation of the B9-regulation largely depends on the willingness and expertise of the police. If they do not correctly identify, inform and treat (alleged) victims, victims have no access to the B9-regulation and will be deported. The possibilities of victims to claim their rights are very limited: most victims are not aware of their rights and in several cases they are deported without being recognised as victim. This is especially the case during police raids in red light areas and border controls. This problem has been acknowledged by the minister concerned (TK 2004-05, 653, 21 January 2004) following questions in Parliament about the arbitrary deportation of possible victims of trafficking. However, it is not clear which measures the government intends to take to address this problem. In general, the (increasing) focus on repressive measures against undocumented migrants negatively affects the proper identification and assistance of victims of trafficking in human beings. Victims who enter the Netherlands as asylum seekers are sometimes incorrectly excluded from the B9-regulation.⁴²

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

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

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

⁴¹ First and second report of the National Rapporteur on Trafficking in Human Beings, The Hague 2002 and 2003.

⁴² E.g. Court Amsterdam, 23 October 2002, No. AWB 02/72704.

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

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

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

For those victims who have the formal opportunity to apply for a permanent residence permit on humanitarian grounds, the burden of proof which is posed on the victim is so heavy that victims are seldom able to pass the test. They, for example, have to prove 'with objective and verifiable documents' that they asked for protection with the authorities of their home country, but that these are not willing or able to provide her such protection. Even in cases in which it is proven that family members in their home country are threatened or abused, the state (INS) maintains that there are no 'objective and verifiable data or concrete indications' of a risk of reprisals. This means that the victim has to prove 'with objective data' that the threats to her family are related to her person.⁴³ These are impossible requirements. Moreover, it can be used against the victim that no convictions in 'her' case have taken place, a factor which is totally outside the power of the victim and is not relevant for the question whether or not it is safe for her to return to her home country.

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

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

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

Whereas policies provide for short term assistance for victims during criminal proceedings, there is a serious lack of assistance with regard to the development of long term perspectives for victims. There is little assistance for victims after the trial and there are no financial means to fund programs aimed at (long term) social inclusion of victims, either in their home country or in the Netherlands. There are no national guidelines on access to education and employment for victims of trafficking. Implementation

⁴³ See e.g. Minister of Immigration and Integration, INS no. 0111-06-4002, 30 August 2005 and 13 February 2006.

Article 6, trafficking and forced prostitution

of national legislation is left to the local governments, which implies different policies in different municipalities. In some cities, for example, victims of trafficking have access to Dutch language courses, in others they are excluded.

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

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

c. Trafficking and forced prostitution among Dutch nationals

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

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

The Dutch NGOs share the concern of the CEDAW Committee about the effects of the lifting of the ban on brothels on the position of undocumented migrant prostitutes and victims of trafficking. Non-EU migrants are excluded from legally working in the sex industry, despite the fact that it has been estimated that at the time of the lifting of the ban on brothels more than half of the prostitutes working in the Netherlands came from a non-EU country. Prostitution is the only kind of work for which it is by law prohibited to issue a working permit.

Though the evaluation of the lifting of the ban on brothels in 2002⁴⁴ does not show a significant shift to the illegal sex sector, it is noted that in particular the position of minor, illegal and trafficked prostitutes has worsened. One of the effects of the change of law is a growing division in the sex industry between, at the one hand, a legal and regulated sector where the position of (Dutch) prostitutes is slowly improving, and, at the other hand, an illegal, unregulated and unprotected sector, where in particular minor, illegal and trafficked prostitutes work. Due to the impossibility to obtain a legal working permit, migrant prostitutes are per definition relegated to the illegal and unprotected sector. According to the 2002 evaluation report, the latter is characterized by 'a lack of supervision and poor accessibility for social and health workers, as a result of which these prostitutes are extra vulnerable for exploitation and their position has worsened rather than improved. They run a greater risk of being confronted with coercive situations, whether or not accompanied by abuse and threats'.⁴⁵ Other research confirms that the exclusion of migrant prostitutes from obtaining a legal working

⁴⁴ Annelies Daalder, *The ban on brothels lifted, Prostitution in 2000-2001*, Parliamentary Papers, House of Representatives 2002-2003, Just 02-80, WODC 2002.

⁴⁵ Report WODC 2002, p. 50-51.

permit makes them more vulnerable to exploitation and other forms of violence than if they could legally perform their work.⁴⁶

This does not lead to the conclusion that the abolition of the ban on brothels should be reversed. Rather it leads to the conclusion that the principles and aims underlying the abolition of the ban on brothels – *in casu* the improvement of the position of prostitutes and the treatment of prostitution as work - should consequently also be applied to the position of non-EU migrant prostitutes. In this context, the question could be posed whether the exclusion of migrant prostitutes from the legal sex sector is in conformity with article 6 CEDAW, which obliges state to take all appropriate measures to suppress trafficking in women. Also the Advisory Board on Immigration Affairs (ACVZ) notes in its report⁴⁷ that if the new policy has *de facto* worsened the position of non-EU migrant prostitutes in the Netherlands, this would pose tension with article 6 CEDAW and would oblige the government to take additional measures. Moreover, it could be questioned whether it is in conformity with article 11 CEDAW (equal treatment in employment) to exclude prostitution from the possibility to get a working permit, given the fact that it are predominantly women who work in this sector.

According to the government report the prohibition on the issue of working permits is ‘simply an acknowledgment of the special nature of employment in the prostitution sector’ (p. 35). According to the Dutch NGOs, however, recognition of the special character of prostitution as work should not be used to exclude migrant prostitutes from the protection national prostitutes enjoy. Rather ways should be found to adapt existing laws to this specific situation, in the same way as has been done and is still done for other specific professional groups. Both from the perspective of combating trafficking and the perspective of equal treatment, the Dutch NGOs are of the opinion that the prohibition on the issue of working permits for prostitution should be reviewed. Lifting of this prohibition would contribute to reducing both the number of undocumented migrant prostitutes and their vulnerability to violence, abuse and exploitation by brothel keepers and clients.

e. Other forms of trafficking⁴⁸

Since January 2005 the definition of trafficking is broadened to include trafficking for all purposes, including domestic work. Research in other EU countries and the experiences of self-organisations and NGOs working with migrant domestic workers in the Netherlands show that migrant domestic workers are often faced with abusive conditions, which can amount to slavery-like practices.⁴⁹ However, up till now hardly any research is done in the Netherlands on the prevalence of trafficking in this sector and/or the working and living conditions of undocumented migrant domestic workers.

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

The Dutch NGOs support the lifting of the ban on brothels as an important chance to improve the position of prostitutes and to better protect their human rights and labour rights. From this perspective, however, there are a number of serious concerns.

⁴⁶ Prof. mr. T.P. Spijkerboer, *The Women's Treaty and the Dutch Immigration laws*, Amsterdam: VU 2002, p. 47.

⁴⁷ Advisory Board on Immigration Affairs (ACVZ), *The UN Women's Treaty in relation to the position of female foreign nationals in Dutch immigration law and policies*, The Hague 2002.

⁴⁸ See for a discussion of the situation of migrant domestic workers and au pairs article 11.

⁴⁹ See e.g. *Doing the Dirty Work, the Global Politics of Domestic Labour*, Zed books, London/New York 2000; and the work done within the Migrants Women's Empowerment Programme of the Commission for Filipino Migrant Workers (CFMW).

Article 6, trafficking and forced prostitution

Though the 2002 evaluation report did not indicate a major shift to the unregulated and/or illegal sector, by now there are strong signals that such a shift is taking place. Moreover, it is not just (undocumented) migrant women and minors who work in the unregulated sector, but also a substantial number of Dutch women who choose to do so for a variety of reasons. A number of causes can be indicated for this shift, such as the exclusion of migrant women from the legal and regulated sector and the closing down of the street zones in a number of the big cities.⁵⁰ An important factor, however, is the lack of policies of the national and local governments to actively improve the position of prostitutes and, most importantly, to create clarity about working relations in the sex sector. This issue will be dealt with under article 11, employment.

⁵⁰ See for a discussion of the impact of the closing of street zones article 12.

Articles 7 and 8, political and public life

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

Despite the formulation of targets and specific policies to increase the proportion of women in management positions, the percentage of women in the top of the public service has hardly increased over the last years (10%). In the international ranking list of women in the top of trade and industry, the Netherlands occupies the last place, together with Pakistan: only 4 % of the members of the boards of directors and of management are women. The percentage of female professors has only slightly increased (9 % in 2005 compared to 5% in 1996), despite the fact that the percentage of female PhD students has increased from 30 to 40% over the last 10 years.⁵¹ There are still very few women working in the police and the military. The first female general was appointed in 2005. The government report does not give information about the participation of women in labour/trade unions.

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

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

The number of women in the police force and in the fire service may be on the increase, but is still very low (in 2002: 18.5% women in executive posts in the police force; 4.4% in the fire service), among others due to the fact that many women who initially enter the police force or the fire service leave within a short period. Although some measures are taken to stimulate diversity in both forces, the masculine work sphere that to a large extent still exists in the police force and the fire service, will have to be actively addressed to bring the number of women to acceptable levels. The same goes for the military, in which the proportion of women is barely increasing and the percentage of women in higher ranks keeps being extremely low (3.8% of women with the rank of Major; 1.3% with the rank of Colonel).

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

⁵¹ Figures from Heleen Mees, ‘Women should finally get to work’, *NRC Handelsblad*, 21 January 2006.

Articles 7 and 8, political and public life

The government report mentions the setting of targets which will have to be achieved by others (political parties, civil society, trade and industry). However, also the government *itself* does not meet the targets which it has set. With respect to the number of female mayors and Queen's Commissioners, the Dutch NGOs want to point out that they are directly appointed by the government, so in this case there is no excuse for not reaching the target numbers. In particular the continuing low percentage of female Queen's Commissioners, namely 8%⁵² (one out of the twelve), is worrisome. The percentage of female mayors is 19. Also when it comes to other appointed positions, for example in advisory bodies, commissions, taskforces and boards of managements of (semi) public companies, the government does not meet its own targets. In fact the number of women appointed in temporary or permanent advisory bodies has decreased over the last years.

The Dutch NGOs welcome the increase of female ministers and secretaries of state in the present government (33% and 50% respectively). However, the government indicates in its report that the quantitative targets for women in elected bodies and as governors are still far from being reached. The percentage of women in Municipal Councils, for example, gets stuck around 23 % already for years. Although the percentage of women in elected bodies is out of the direct influence of the government, it could play a much more active role in stimulating more female candidates on eligible positions. Apart from setting 'performance standards' the government did not take any measures to actively encourage political parties to put more female candidates in eligible positions and to nominate women for political appointments, neither did it stimulate local or provincial governments to do so (see also under c).

The government has put forward several proposals to change the present electoral system. However, up till now no Gender Impact Assessment has been made with regard to the effects of the different systems on the participation of women, including ethnic minority women, in elected bodies.

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

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

In its judgment of 7 September 2005,⁵³ the District Court of The Hague judged that the funding of the SGP under the Political Parties (Funding) Act by the Dutch state is in violation with its obligations under CEDAW and ordered the state to stop such funding immediately. It should be noted that this is the first time that a court gave direct effect in national law to one of the articles of CEDAW. According to the court the failure of the state to take adequate measures could not 'be justified by the need to protect another fundamental right and the state could not take the position that it already sufficiently had met its obligations under the Women's Treaty'. On the contrary, 'by its funding, it actively facilitated the SGP'.

With regard to the relation with other fundamental rights the Court considered that although the treaty parties had not wanted the prohibition on discrimination of article 7 CEDAW to always prevail over the freedom of association, this prohibition – in the light of the specific restriction to association in

⁵² 2003

⁵³ The judgment is to be found on the Internet-site www.rechtspraak.nl, no. AU2088.

political and public life – did apply, however, to political parties. It stated that at the time of the realisation of CEDAW already a balance of interests had been struck, in which the prohibition on discrimination ought to prevail in as far as it concerns political parties. In addition, it noted that the Netherlands had ratified CEDAW without reservations. It concluded that ‘since the SGP is a political party, the state has the unrestricted obligation to actively take measures as required by the Women’s Treaty’” Moreover the court noted that the case not only touched the interest of SGP-women to be able to become member of the SGP, but ‘the interests of all persons, in particular women, to live in a democratic society in which discrimination on the basis of sex – with the consequence of exclusion from the right to be eligible - is not tolerated and in which the state acts to uphold this’. The Dutch Minister of Internal Affairs, however, has decided to appeal against the judgment of the district court.

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

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

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

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

Article 9, nationality and immigration law⁵⁴

a. Lack of statistics and the failure to draw up Gender Impact Assessments

In November 2002 the Advisory Board on Immigration Affairs (ACVZ) published a national report on the implementation of the Women's Convention in relation to the position of migrant women in the Dutch immigration and refugee laws and policies.⁵⁵ The Dutch NGOs strongly support the principle formulated by the ACVZ that, where possible, measures should give migrant women an independent as possible position vis-à-vis other private parties whose position is strengthened by immigration law. If that is not possible the state should offer protection. They also support the recommendation of the ACVZ to draw up a Gender Impact Assessment preceding important policy changes, for example with regard to the introduction of stricter requirements for family reunification. However, in practice no GIA has been made, neither with regard to the changes in the laws and policies on family reunification nor with regard to the new proposed Integration Act, despite the fact that there are strong indication that the new, more restrictive, requirements disproportionately affect women.

In addition, the Dutch NGOs note that there is still a general lack of figures with regard to the position of immigrant, refugee and minority women. Also the ACVZ-report did not contain such statistics. Moreover the ACVZ-report limited itself to the position of these groups in relation to immigration laws and policies. However, the majority of immigrant, refugee and minority women (around 70%) have the Dutch nationality and thus fell outside the scope of the ACVZ-report. There is still a structural lack of information on the *de facto* situation of this group with regard to their access to education, employment and health care.

b. Dependent residence right: improvements but not yet solved

Since 2000 immigrants with a dependent residence permit are entitled to an independent residence permit after a period of 3 years without further requirements. Since 2003 women who leave their partner within this period of 3 years because of demonstrated domestic violence are also entitled to an independent residence permit. These are important steps forwards.

The dependent residence permit for marriage migrants has been a point of debate for many years. One of the arguments of the government to justify the dependent residence permit has always been that it is a necessary instrument to prevent sham marriages. However, no research has been done as to the supposed necessity and possible alternatives. This is in particular relevant given the negative effects it has on the emancipation and integration of foreign female partners, the principle of the realisation of an as independent as possible position of this group of women, as formulated by the ACVZ, and the importance the government attaches to a good and quick integration of migrant women. The major objection is that it reinforces the traditionally unequal power relationship between husband and wife, of which domestic violence is one of the excesses. Apart from that it also gives the partner an instrument to prevent their wives from following education (art. 10), to find employment (art. 11), to maintain contacts with others, etc. Around 70% of all marriage migrants are women⁵⁶. Many female migrants do not dare to leave their partner for fear of losing their residence status.

The Dutch NGOs consider it important improvements that the period of dependency has been reduced from 5 to 3 years and that women are entitled to an independent residence permit if the relation is severed within this period of 3 years because of 'demonstrated domestic violence'. However, concerns

⁵⁴ The government report uses the term Aliens law.

⁵⁵ Advisory Board on Immigration Affairs (ACVZ), *The UN Women's Treaty in relation to the position of female foreign nationals in Dutch immigration law and policies*, The Hague, 2002.

⁵⁶ CBS StatLine, Immigration of non-Dutch nationals disaggregates on migration motives. Voorburg/Heerlen: CBS 2005.

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

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

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

c. New requirements for family reunification disproportionately affect women

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

- The Dutch partner⁵⁷ now has to earn 120 % of the minimum wages in a fixed job with a labour contract for at least a year. Up until April 2004 this was 70 %;
- The age for marriage-migration has been raised to 21 year (for both partners);
- The existing exemption on the income requirement for single parents with children under the age of 5 has been abolished;
- The *leges* to obtain or renew a residence permit are substantially heightened ;

In addition, as of 15 March 2006, foreign partners are obliged to do an exam in their home country to test their knowledge of the Dutch language and culture,⁵⁸ preceding the issue of a residence permit even if all the other requirements are met (the so called 'inburgeringstoets' or 'integration test'). In general women have a weaker position than men on the labour market in terms of participation, level of income and job security, which makes it more difficult for them than for men to meet the income requirement and to have a chance to actually be reunited with a non-Dutch partner.

This is even stronger so for women from ethnic minorities who earn relatively lower wages (compared to Dutch women and ethnic minority men) and are less often employed on a permanent basis. For single women who take care of young children it will be as good as impossible to meet the income requirement. Also this requirement affects women from ethnic minorities in particular, as among this group there are considerably more single mothers than fathers (see table below).

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

⁵⁷ More accurately: the partner who is (legally) residing in the Netherlands. This can relate to partners with the Dutch nationality or partners with a residence permit for the Netherlands.

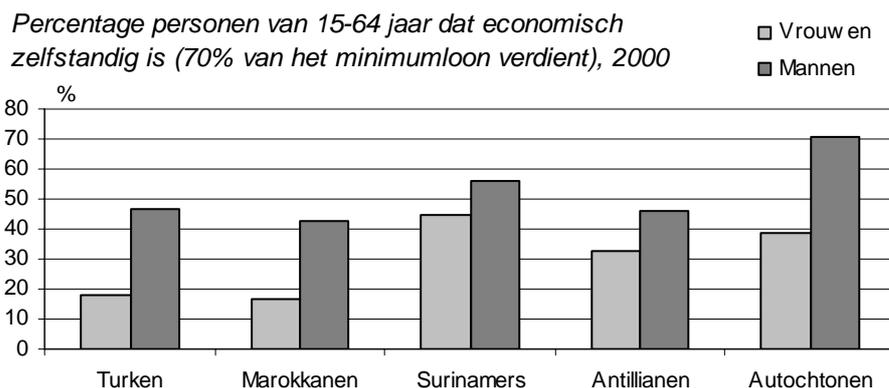
⁵⁸ In this respect it should be noted that when trying out this exam even high educated Dutch nationals and students from Teacher Training Colleges failed to pass the test.

Article 9, nationality and immigration law

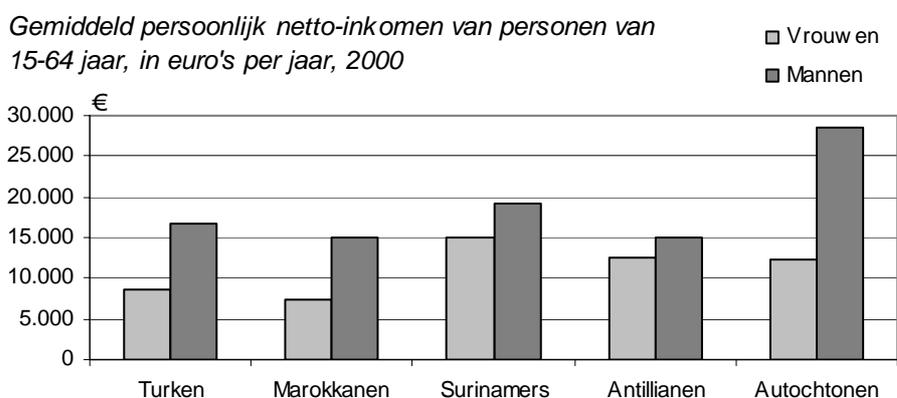
	Turkish	Moroccan	Surinamese	Total population
Women	6	5	17	3
Men	1	0	2	1

Bron: Gijsberts en Merens, 2004.⁵⁹

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



Source: Gijsberts en Merens, p. 122.



Source: Gijsberts en Merens, p. 120.

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

Percentage of workers with a flexible labour relation, 2002.

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

⁵⁹ Gijsberts, M. & A. Merens (red.), *Emancipation in Estafette, the position of women from ethnic minorities*, The Hague: SCP 2004.

(Flexible labour relation means a contract shorter than 1 year without perspective on a fixed labour contract.)
Source: Gijsberts en Merens, p. 104.

If the new requirements indeed indirectly discriminate women, in particular immigrant, refugee and minority women and women with small children, this would constitute a violation of CEDAW⁶⁰ and seriously affect their right to family life, one of the most fundamental human rights. Already in 2002 the Advisory Board on Immigration Affairs (ACVZ) concluded in its report on the relation between CEDAW and the Dutch immigration laws that the policies concerned might violate art. 16, sub 1 (a) and (d) of the Convention. They recommended collecting statistical information on the extent to which the different groups (broken down along sex and ethnic background) are able to meet the income requirement and to submit the proposals concerned to a Gender Impact Assessment. However, despite these recommendations and despite strong indications that the requirements concerned disproportionately affect women, no Gender Impact Assessment has been made before their introduction. According to the government it had no use to make a GIA 'since its outcome will not affect the policy changes' as the policy concerned had already been agreed upon (minister of Immigration and Integration, in response to the ACVZ-report). In light of the obligations of the Netherlands under CEDAW this is, to say the least, a remarkable argument.

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

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

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

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

⁶⁰ See e.g. prof. mr. T.P. Spijkerboer, *The UN Women's Treaty and the Dutch Immigration Laws*, Amsterdam: VU 2002, p.10 ev.

Article 9, nationality and immigration law

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

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

If an asylum seeker is referred to the 'accelerated procedure' she or her lawyer has only 2 hours to prepare for the interview with the INS and 3 hours to read and comment on the report of the interview. In the case of female asylum seekers who have been victim of sexual violence, female genital mutilation, honour-related crimes or domestic violence this is extremely short, especially when taken into account that generally women do not easily talk about this kind of experiences. Moreover, a second asylum request is only taken into consideration when there are 'new facts', i.e. facts that were not and could not be known during the first procedure. This means that if a woman is not able or willing to talk about the sexual violence during the first interview she has no possibility to submit a second application.

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

Following the critique of HRW, the government has adapted its policy (TBV 2003/24): in the case of a repeated asylum request the INS now has the possibility to take into account new aspects if it is plausible that these aspects were not put forward by the asylum seeker because of the existence of a trauma. However, a judicial review is still not possible since the highest court in asylum matters (Raad van State) has judged that, contrary to an administrative body like the INS, the judge does not have a discretionary competence. This means that there is no independent court which can review the enforcement of the new policy, a fundamental condition in the framework of the rule of law. This is the more important since an incorrect decision of the INS can lead to a violation of the prohibition on *refoulement*.⁶¹ To allow for judicial review the law needs to be adapted.

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

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

The state report extensively describes the Dutch policies on domestic violence with regard to Dutch women. However, although the EU has recommended the recognition of domestic violence as a ground for asylum, the Dutch government still categorically denies this possibility. Women are not recognised as a 'social group' according to the Refugee Convention. In contrast with British [House of Lords 25 March 1999, *Islam and Shah*] and American case law, the Dutch policy doesn't offer the possibility of being granted refugee status because of belonging to the social group of 'women' or 'battered women'. The threshold for female asylum seekers to prove that they are not protected against domestic violence in their own country is extremely high and seldom being met. This leaves the women concerned in the impossible position that it is not disputed that they are victim of domestic violence, but nevertheless are sent back because they cannot prove that they will not be protected by their own authorities.⁶²

⁶¹ On 5 July 2005 the European Court for Human Rights judged for the first time that by the deportation of an Eritrean asylum seeker the Netherlands had violated art. 3 ECHR, the prohibition on torture and inhuman or degrading treatment.

⁶² See e.g. District Court 's Hertogenbosch, 6 June 2005, No. awb 04/21435, Nigerian woman, rape within marriage, protection /asylum claim denied because she didn't file a complaint with the Nigerian authorities.

Since recently female genital mutilation is recognised as a ground for asylum. However, this is not the case with fear of honour killings. Like in the case of domestic violence, women fearing to become the victim of an honour killing in their own country, have to prove that they are not being protected by their authorities, evidence of which is often difficult – if not impossible - to obtain. According to the Minister of Justice no specific policy is needed in this respect because she takes these situations into account in her general policy. However, case law of the highest court in immigration matters (Afdeling Rechtspraak Raad van State) shows that if in a ‘regular’ procedure the woman states that she cannot return to her home country because of fear for a honour killing or domestic violence, the Court holds that this motivation is refugee-related and therefore cannot be taken into account in the ‘regular’ procedure. At the same time the Court recently judged that sexual violence is no ground for asylum.⁶³ The result is that victims of sexual violence can neither qualify for refugee status nor for a regular residence permit.

The state report mentions that at the introduction of the new Immigration Act, Instruction no. 148 has been incorporated in the Immigration Circular. However, it does not mention that a number of important aspects that were included in the old Instruction no. 148 are not incorporated in the new law, in particular the possibility of granting a residence permit on humanitarian grounds.⁶⁴ The Dutch NGOs are of the opinion that in serious cases of domestic violence or other forms of sexual violence it should be possible to grant a residence permit on humanitarian grounds, as recommended by the ACVZ in its report (p. 23). The text of the Immigration Act should be adapted to this aim.

g. Unwillingness to incorporate the UNHCR gender guidelines

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

Another problem are the country reports that are used as background material to decide about asylum requests. These still do not systematically deal with the position of women in the country concerned and information is often inconsistent and incomplete.⁶⁵ The same goes for the Immigration Circular. Even if, as stated in the government report, the establishment of separate gender guidelines does not fit into the Dutch legal system, the UNHCR *Gender Guidelines* are a valuable instrument to adapt the present provisions.

h. Obstacles for the participation of immigrant, refugee and minority women

It is positive that the government pays specific attention to women in its integration policies. However, this attention is used to weaken the position of immigrant, refugee and minority women rather than to strengthen their position. It is, for example, a justified concern that there are, in particular older, migrant women who find themselves in an isolated position⁶⁶ and lack knowledge of the Dutch

⁶³ A complicating factor in these cases is the legal distinction between ‘regular immigration procedures’ and ‘refugee procedures’. According to the new Immigration Act, it is not allowed to submit an application under both procedures.

⁶⁴ Exceptions are victims of trafficking and battered wives with a dependent residence permit. In this case it is still possible to apply for a staying permit on humanitarian grounds.

⁶⁵ Spijkerboer, a.w., p. 20 ev.

⁶⁶ Isolated in this context should be interpreted as ‘isolated’ from the mainstream Dutch society. In most cases

Article 9, nationality and immigration law

language. However, rather than stimulate their (labour) participation, combat discrimination in the labour market, offer free and easily accessible language courses and good, cheap and accessible childcare facilities, measures are taken which reinforce the dependency of immigrant women on their partner and risk increasing the barriers for immigrant, refugee and minority women to integrate and participate. Under the new Integration Act, for example, all immigrants are obliged to follow a mandatory 'integration course' followed by a mandatory 'integration test'. Immigrants have to pay the course and the exam by themselves, which can run up to 6000 Euro. Specific groups, among which certain groups of women, can get (partial) compensation of the costs on the condition that they pass the test within a fixed period. If they fail to do so, they are not only not entitled to (partial) compensation, but also risk getting a substantial fine. For women this has a number of specific consequences:

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

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

i. Linkage Act: no protection for undocumented women

According to the new Immigration Act (Art. 10, which followed up the 1998 Linkage Act) undocumented migrants have no access to healthcare and the social security system, except for 'medically necessary' care. Prior to the enactment of the Linkage Act, no Gender Impact Assessment has been made, despite indications of disproportional consequences for women.

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

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

In practice many undocumented migrants refrain from asking for help because they think they are not entitled to it. This is reinforced when service providers refuse to provide help either because they do

there are strong family ties and networks of friends, as well as strong networks through, for example, the churches.

NGO Shadow report on the implementation of CEDAW in the Netherlands

not know the regulations or because of the financial risks. This enhances the vulnerability of undocumented migrant women for abuse and exploitation.

Article 10, education

a. Shortcomings of the report

Structure of the report

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

Lack of information disaggregated by sex and ethnicity

The only detailed information disaggregated by sex and ethnicity in the government report is the table on educational standard on page 52. But even this table provides not the information that is needed: the category of ethnic minority is too general (it also includes western immigrants), and the figures are rather old (published in 2001, which means the figures are even older).

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

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

In its report the government does not mention the government's targets and objectives in the education-emancipation-policy. The Emancipation Monitor quotes the yearly report of the ministry of Education of 2003 when it mentions as general target: 'equal representation of male and female students in all educations and male and female personnel in all management positions'. This general target is made operational in the following objectives: an increase of the intake and moving on of female students in technical education and of male students in teacher training and care education, and an increase of the number of women in management positions in higher education.

These objectives are not covering the whole general target, for example the equal representation of male and female personnel in other than higher education is translated into an objective.

However, apart from a very specific program to promote women senior lecturer positions at universities (Asapia program), the government does not present a comprehensive set of measures to achieve these objectives, using gendermainstreaming as an excuse (general policy should be sufficient to achieve the objectives). The Emancipation Monitor 2004 shows very clearly that the objectives are not achieved; segregation in education is still very dominant (see also following paragraphs, in which figures will be given). Both the principle of gendermainstreaming and the CEDAW Convention require measures to achieve equality of men and women. If general policies are not sufficient (which is the case), specific measures are obligatory. As CEDAW obligations go further than equality for the law, not taking specific measures to achieve the objectives of equal representation of male and female students in all educations can be seen as violation of article 10 of CEDAW.

c. Representation and performance at different school levels

Primary school

Figures of the Emancipation Monitor 2004 show that the test score of girls at the end of primary score are a little lower than the score of boys. This applies also within most ethnic groups, except for the

Surinam girls; their score is better than the score of Surinam boys. The score of Antillean girls is considerably lower than both the score of Antillean boys and that of other girls.

Table 3.1 CITO-test primary education, by Ethnicity, 2002 (average total score)^a

	meisjes (girls)	jongens (boys)
autochtoon (ethnic Dutch)	535,37	536,10
Turks (Turkish)	527,84	528,82
Marokkaans (Moroccan)	527,94	528,56
Surinaams (Surinam)	532,01	529,40
Antilliaans/Arubaans (Antillean/Aruban)	524,87	529,35
Totaal (total)	534,31	535,08

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

Source: Emancipation Monitor 2004

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

The school advice on the secondary education is partly based on the CITO-test, but also on the opinion of the teacher of the last grade of primary school. No detailed information, disaggregated by gender and ethnicity, is available with respect to this school advice, although it can be expected that in particular at this point gender- and ethnic stereotypes can play a role. Comparing the figures on the school advice to those on the CITO test can provide information on the role stereotypes do or do not play in the advice.

Secondary school

In the Dutch school system, girls are somewhat overrepresented in the higher forms of secondary education, and underrepresented in the prevocational education, when compared to boys. This is also the case within the ethnic groups. However, the differences between ethnic Dutch students and those of ethnic minorities is bigger than the differences between boys and girls. Turkish and Moroccan girls attend much more often prevocational education than ethnic Dutch girls, and less often higher education⁶⁷.

Vocational Education

In 2002/2003 the number of students in 'senior secondary vocational education' (MBO) was 446.000, while the numbers for higher professional and university were respectively 261.000 and 167.000 (source: Emancipation Monitor 2004). With this amount, senior secondary vocational training is the most common professional training in the Netherlands. Therefore it is remarkable the Dutch government does not report on this type of education.

Higher education

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

⁶⁷ Emancipation Monitor 2004

d. The segregation in education is alarming

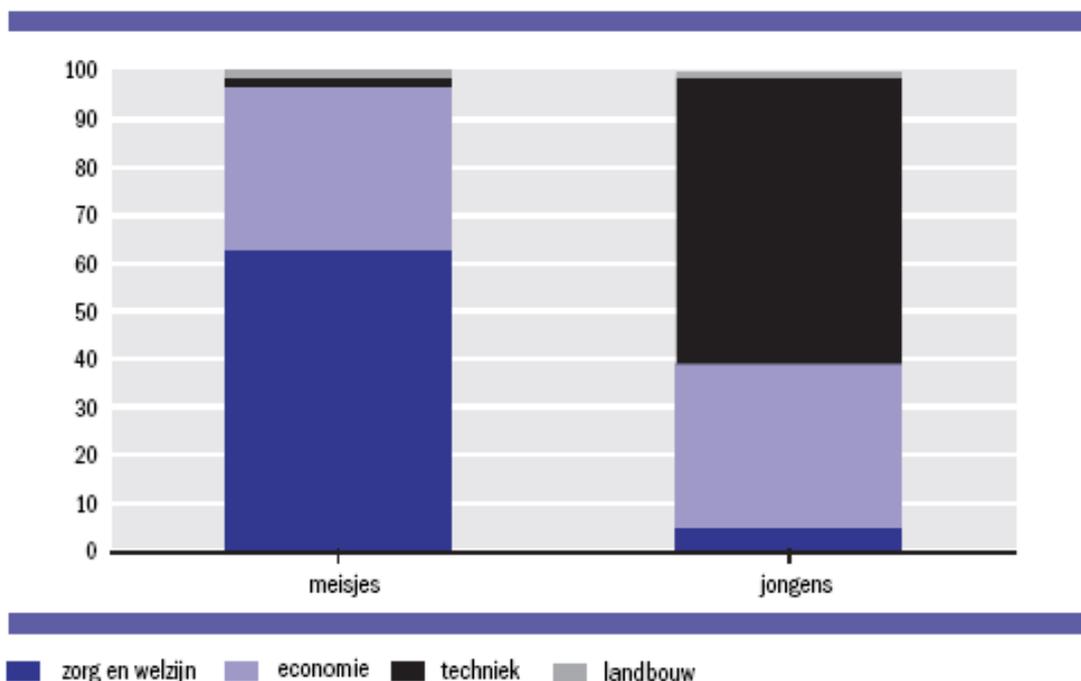
secondary education

In all forms of secondary education, girls hardly (less than 5%) choose technical profiles, while boys hardly take up care and welfare profiles.

The statement of the government that “large numbers of girls have opted for the subject combination entitled ‘Science and Health’” (page 51) is not supported by the figures of the Emancipation monitor 2004. To begin with, the profile ‘Science and Health’ does not exist. In senior general education and pre university education, there is a profile ‘Nature and Techniques’, and a profile ‘Nature and Health’. The first one is hardly chosen by girls (1-4%); the second one by around 15% of the girls at senior general second education, and by almost 30% of the girls at pre university education.

In pre vocational training, the type of education most students do attend, the situation is even worse, as is showed by the following histogram:

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



Bron: CBS (Onderwijsstatistieken 2002/'03)

profielkeuze = choice of profile

vmbo= pre vocational education

meisjes= girls; jongens = boys

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

This diagram makes words superfluous.

Higher education

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

Not taking measures is a violation of CEDAW

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

e. Discrimination of minority girls in teaching practice

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

f. No information on adult education and vocational training

Now the Dutch government is not reporting on adult education and vocational training, it is difficult to discuss the subject. For a good discussion, detailed figures are needed. However, the Dutch NGOs want to express some worries.

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

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

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

The ‘knowledge-society’ is one of the bigger issues in the policy of the ministry of education. One of the objectives in this policy was to increase the participation of women in the knowledge-society. This objective has disappeared from the policy⁶⁸. The Dutch NGOs have the impression that the policy on knowledge society, as well as the established ‘platform on innovation’ are rather male-dominated and (because of that?) more and more narrowed to technical and ICT-topics. The Dutch NGOs see this as a missed opportunity: the original broad approach to the knowledge society and innovation had several starting points for both gendermainstreaming and specific measures aimed at emancipation.

h. No information on gender education

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

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

Primary schools

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

Female professors

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

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

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

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

In February 2006, the government signed an agreement with several sport federations and the four biggest cities of the Netherlands, called ‘Time for sport, participation allochthonous youth by sport’. In this agreement is stated that Muslim and Hindustan girls do less participate in sports; the activities that will be carried out within the project will pay special attention to their participation. The agreement

⁶⁸ Emancipation Monitor 2004

does contain targets; the results of the project will be monitored. Although the targets are rather general, and the activities within the framework of the project still have to be worked out, the structure of this plan seems good: target, measures related to the target and monitoring, are all included, as is the attention for gender-aspects. A good example of gender mainstreaming (at least in the planning phase).

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

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

Articles 11 and 13, employment and economic life

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

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

b. Almost no information disaggregated by sex and ethnicity

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

The government report does not contain detailed information disaggregated by sex and ethnicity on other important topics, like equal pay, the use of childcare, combining work and care, horizontal and segregation on the labour market. This information is essential to analyse and monitor the position of women, and to judge whether measures are needed, and whether the measures taken are appropriate. In the Netherlands, it is still no practice to disaggregate all important statistics by sex and ethnicity.

c. The high unemployment rate of women requires measures, with special attention to minority women and women re-entering the labour market

Unemployment

The information on the employment and unemployment as presented in the government report is from 2001. More recent information from the Central Bureau of Statistics (CBS) shows that although the employment rate of women (working 12 hours or more per week⁶⁹) did increase up to 59 percent⁷⁰ in 2005, women do not equally profit from the recent economic recovery, and the decrease in unemployment. CBS-figures show that the unemployment is highest under young women.

The government left the topic of the participation of women at the labour market to social partners and local governments. Recent years showed that did not bring the expected results. The Central Bureau of Statistics concluded that the government's objective –65% of the women is employed for 12 or more hours a week in 2010- will not be achieved. It is necessary that the government recognises its responsibility and its obligations under CEDAW, and take effective measures to combat the discrimination of women in employment and economic life. Taking into account the ineffectiveness of

⁶⁹ This limitation makes international comparison difficult. It should be better to present the figures in labour-years.

⁷⁰ CBS, february 2006, as presented in De Volkskrant, 7 february 2006.

NGO Shadow report on the implementation of CEDAW in the Netherlands

the soft measures of the past years, harder measures should be taken, including temporary special measures as mentioned in article 4-1 of the Convention.

Unemployed workers by sex and age

	15-24		25-44		45-64		Totaal	
	%	x 1 000	%	x 1 000	%	x 1 000	%	x 1 000
Man								
2005 Sep-Nov	10,9	47	4,8	105	4,6	73	5,3	225
2004 Sep-Nov	13,5	61	4,8	108	4,5	71	5,6	240
2003 Sep-Nov	9,9	47	4,6	105	3,9	59	4,9	212
Woman								
2005 Sep-Nov	13,2	53	6,7	117	6,3	65	7,4	236
2004 Sep-Nov	13,8	54	6,8	118	5,6	56	7,3	228
2003 Sep-Nov	10,3	41	6,4	111	5,2	49	6,5	201
Total								
2005 Sep-Nov	12,0	100	5,6	222	5,3	139	6,2	461
2004 Sep-Nov	13,6	115	5,7	226	4,9	127	6,3	468
2003 Sep-Nov	10,1	88	5,4	216	4,4	108	5,6	412

Source: CBS

Immigrant, refugee and minority women

Also in most ethnic groups, the unemployment⁷¹ of women is higher than the unemployment of men⁷². In the Turkish, Afghan and Somalian group the differences are big. In the Antillean, (ex-)Yugoslavian and Iranian group, there are almost no differences between men and women.

The unemployment of minority youth is high (25%); with little differences between men and women. An exception is formed by the Surinam youth: the unemployment of men is 20%, and of women 24%. It is the obligation of the government to take appropriate, effective measures to combat the unequal high unemployment of women, and of various ethnic groups of women. In recent years, the government terminated measures aimed at improving the position of women of ethnic minorities on the labour market, such as the Employment of Minorities Promotion Act (Wet SAMEN) and the Committee for the Participation of Women from Ethnic Minorities in the Labour Market (PAVEM). Termination of a measure is appropriate if the measure is not effective. But in that case, other, more effective measures should be enforced. The Dutch government did not take other measures to replace the terminated ones.

Women re-entering the labour market

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

d. Discrimination in the workplace: analysis and enforcement needed

⁷¹ Those who are registered as unemployed and are looking for a job.

⁷² Social atlas of women of ethnic minorities, SCP, March 2006

Article 11, employment

Discrimination in the workplace still occurs, as the government states in its report. The projects as described by the government are very broad; they cover all discrimination grounds. To judge whether any measure is effective to combat discrimination of women (and of immigrant, refugee and minority women in particular), detailed analysis and monitoring is necessary.

The equal treatment law is in place, but little is done to enforce it (see also the remarks under article 2, and the shadow report of the Equal Treatment Commission).

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

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

The average pay-gap between 'autochthonous' women and minority women is considerable, but after correction for personal and profession-backgrounds, the differences disappear.

Most measures that are taken on equal pay are rather soft: research, quick scans and awareness raising. Although this are conditional measures, the stagnation makes clear it is not enough. It is necessary to take more effective measures. The law on equal pay does exist, but is rarely enforced. It is very hard for women to proof unequal payment: male colleagues are not obliged to give openness about their salaries.

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

Despite the recommendation of the CEDAW Committee in its last concluding observations, the Dutch government did not report on its efforts to improve the conditions for working women so to enable them to choose full-time, rather than part-time employment. The Dutch NGOs have the impression that the policy of the Dutch government is not aimed at promoting full time work by women. No measures are taken to make it more easy to work full-time. On the contrary: several measures, like the very high costs of child-care. in case the family income is above a certain level, discourage women to work more. The Dutch government seems to be satisfied with the '1,5-earners-model', in which the man has a full-time job, and the woman a half-time job. This 1,5 earners model often is the starting point of governmental policies.

On the other hand, the Dutch NGOs want to stress that a lot of the bigger part-time jobs entail fulltime workload, for example in health care, where the pressure of work is high, and jobs of 32 hours are rather common. The Dutch NGOs therefore would suggest to promote the employment of women in jobs of 32 hours or more, instead of just 'full-time'. Few Dutch couples with young children choose to have two full-time jobs; they rather choose the 1,5-earners model; sometimes they choose for both partners working 4 days (32 hours). The latter choice gives good opportunities for a more balanced division of work and care. Measures to promote women to choose jobs of 32 hours or more, therefore could also include measures to promote men to choose jobs of 32 hours or less.

The Dutch NGOs are concerned about the plans to increase the fulltime norm to 40 hours a week (now 36-38 hours). It can be expected that this change will have the effect that men will care less, and women will apply for fulltime jobs less.

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

In its report, the government spends two paragraphs on combining work and care (par. 4 and 7). In paragraph 4, some legal measures are described; mainly old legislation. It also mentions an evaluation of the Working Hours Adjustment Act, but without mentioning the results. Most of the provisions of the Work and Care Act and the Carer's Leave Act, are unpaid.

The new life course saving scheme makes it possible for employees to save a part from their salaries for long term leave, parental leave and/or early retirement. The expectation is that especially people with higher incomes will make use of the scheme in favour of earlier retirement: they can miss part of their monthly salaries, and they can save an amount that makes it possible to take a substantial period of leave. Under pressure of the parliament, the new life course saving scheme has been subjected to a Gender Impact Assessment⁷³. From the English summary of the conclusions of this assessment: "In general, the main users of the Life-course Savings Scheme will be employees on higher incomes, men, older people and couples without children. Use of the Scheme to fund care leave (caring for children or providing informal care) is likely to be modest. The financial benefit is generally small, and it is likely to be mainly women in the higher income groups who will use the Scheme for this purpose. The temporary parental leave allowance could however boost the use of the Scheme and increase the take-up of parental leave by men in particular. If the government wishes to support the take-up of parental leave and promote the participation by men in care tasks, this allowance needs to be given a structural character. Take-up of the Scheme for funding pre-pension arrangements is likely to be significantly higher. The wish among employees to stop work before age 65 is strong and the relatively long period involved (1.5-2.1 years) means that saving via the Life-course Savings Scheme offers a greater financial benefit. Here again, it will be largely the higher income groups who are able to benefit from the measure, and men and women who have not used the Scheme to fund care leave will have an advantage. All in all, the Life-course Savings Scheme is more important for the possibilities it offers for funding pre-pension arrangements (particularly for the higher income groups) than for combining work and care. The Scheme does virtually nothing to bring closer the government's emancipation objectives." The assessment states that if the government wants the life course savings scheme to contribute to the goals of the emancipation policy (65% participation of women on the labour market, more than 60% of the women economic independent, share of men in unpaid work 40% and share of the income of women in total income out of labour 35%), more substantial measures are needed. In particular making the use of the scheme financially more attractive would help. A structural advantageous arrangement for both parental leave and care leave is legitimate.

In reaction on the Gender Impact Assessment the Dutch government stated that it saw no reasons to adjust the life course savings scheme. The Dutch NGOs find this incomprehensible, especially since the government is not taking any other measures to a more balanced division of work and care. Moreover, in the light of the life course savings scheme, additional arrangements of paid parental leave or care leave, which are part of some collective labour agreements, are being terminated.

The life course savings scheme surely can not be seen as an effective policy to ensure a more balanced division of paid and unpaid care, as is required by the CEDAW Committee. Either adjustment of the scheme or additional measures are needed.

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

The new Childcare Act (2005) changed the system of the childcare. In practice, the new system did not make it easier for parents to arrange childcare. The paperwork, which was previous done by intermediates, discourages many parents, in particular those with lower education and income, to make use of childcare in the new system. People with higher incomes were confronted with higher costs of childcare; an increase that is not (fully) compensated by the contribution of employers and tax-repay. The system discourages women to work more days a week: the costs of the child care will increase,

⁷³ SCP, 2004

Article 11, employment

not only because of an extra day child-care, but also because the family-income is higher, so the parental contribution per day will also increase. After the change of the Childcare Act, 7,5 % of the parents reduced the use of childcare, 6% terminated it, and only 1,4% increased (or started) the use of childcare⁷⁴. During 2005 several childcare centres had to close down. It is not unthinkable that in particular women with small jobs plus husbands with fulltime jobs, gave up work, because they had to spend 'all the income of the woman' on childcare. Starting January 2006, the financial compensation for the higher incomes has improved, which immediately led to an increased demand (newspaper, Jan. 2006).

One of the problems regarding childcare in the Netherlands is that the government presents childcare only as a condition for the 'higher economic goal' of participation of women on the labour market. No attention is paid at the educational aspects of good childcare. The government does not set quality standards for child care; this is left to social partners (in the collective agreement in the childcare sector) and local authorities. Also, the 'ideology of motherhood' is rather stubborn in the Netherlands (see also article 5). The government does not take measures to tackle this ideology. The Dutch NGOs want to stress that good childcare is of great importance for children, for parents and for society, and not only because of its economic benefits for society. The Dutch government could learn from the Scandinavian countries in this aspect; in that countries professional child care is seen as part of a good education. The importance of childcare for society should also imply that a bigger part of the costs of childcare is taken by society, instead of individual parents.

i. No real long uninterrupted school day

Instead of ensuring a long, uninterrupted school day, as required by CEDAW in its last concluding comments, the government developed some different plans regarding the care for children before, in between and after school-hours.

From August 2006, schools will be responsible for providing care at noon. Although this is an improvement (it is a responsibility of parents now, with all financial risks which come with it), it is not sufficient. School hours will not change, which means that the standard remains that children go home for lunch, and staying over is an exception. Besides that, the costs will probably rise (and no compensation for this costs is available), which will make the threshold to make use of this provision even higher. There are no quality standards for the stay over lunch break at schools.

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

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

In overcoming the glass ceiling, which has proven to be very resistant, the Dutch government accounts on some social change that will come autonomously, but admits that additional efforts are essential. Which additional efforts the government will make, is not clear. The only concrete measures that are mentioned are an European project 'Mixed', and the development of a benchmark. The European project ended by the end of 2004. The government does not mention how to translate possible positive results of the project to structural policy and measures. According the benchmark, the government states that assessing their own results might encourage companies to take measures to improve women's chance of promotion. This is a lot of wishful thinking. Why should companies

⁷⁴ Speech of the minister of Social Affairs on 28 February 2006.

assess their own results against the benchmark, and why would they take measures? For real change, pressure and hard measures by the government are essential.

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

k. The segregation of the labour market is stubborn

The Dutch government does not report on this topic. Although the CEDAW Committee urged the government in its concluding observations of 2001 to increase its efforts to eliminate stereotypes relating traditional areas of employment for women, the government did not take any measures.

Since 1996 hardly any changes have been registered in the top 10 of male occupations (building sector, technical sector), of which 99% of the workers is male. Neither in the top 10 of female occupations (care and health sector and administrative work). In occupations which require higher education participation of men and women is more equal.

Figures of 2002⁷⁵ show that in the health sector, almost 80% of the employees was woman, while this percentage for the industry is 20%, and for the building trade less than 10%.

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

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

A general critique is that until now, activities of the authorities have predominantly focused on the aspects of regulation, repression and control of prostitution rather than on the empowerment of sex workers and the improvement of their position.

At the lifting of the ban on brothels, most municipalities maximised the number of licenses they were willing to give out. In particular small cities have used the change of law and the introduction of a licensing system to try to suppress the number of brothels or have them disappear at all by not giving out licenses. In practice this has meant that licenses have predominantly been given to existing brothel keepers, thus blocking any possibilities for innovation in the legal/regulated sector, in particular the establishment of small brothels run by women themselves. In general, due to the introduction of the licensing system and the increased control, the possibilities for women to work independently at home or in small women-owned brothels in apartments have decreased.

Little effort has been made to properly inform prostitutes about the change of law, to involve them in the development of (local) policies, to support their emancipation and to redress the (historically grown) unequal working relations in the sector. In the implementation of the licensing system little attention has been paid to the interests of the women concerned, for example in protecting their privacy and maintaining their anonymity towards the brothel keepers. As a result of this a substantial number of women prefer to work in the unregulated sector as they feel that the regulated sector does not meet their needs and interests.

Moreover, even if in theory prostitutes have more rights, in practice there are still many barriers to actually claim those rights. Though, for example, officially prostitutes are entitled to social security,⁷⁶ for example if they get fired or unemployed, over the last years only one prostitute claimed and got

⁷⁵ *Emancipation Monitor 2004*, SCP, p.78.

⁷⁶ Assumed that there is an employment relationship.

Article 11, employment

unemployment benefit. At the same time, the tax department is of the opinion that in the majority of cases there exists an employment relationship between the brothel owner and the prostitutes working in the establishment. In practice it appears extremely difficult for sex workers to claim their rights, both vis a vis their employers and the state. This is partly due to the existing unequal power relationship between the owners or operators of clubs and brothels and prostitutes, but also to the stigma on prostitution and the fact that many prostitutes, given a history of being policed rather than protected or supported by the state, are not used to think in terms of rights. All these factors act as barriers for women to organise and stand up for their rights.

To overcome the barriers for prostitutes to actually claim their rights, to support their (labour) emancipation and to redress the unequal power relationships in the sex sector, active policies are needed from the national government, in particular the Ministry of Social Affairs and Employment, in cooperation with the relevant state agencies, the parties directly involved and NGOs working in the field. Instead, in 2004 the subsidies of the Red Thread, the prostitutes' rights organisation, were cut back, while the government funding of two expert organisations on prostitution and trafficking in women (Mr. de Graaf Foundation, Institute on Prostitution Issues, and the Clara Wichmann Institute, Expert Centre on Women and Law) was cut down completely, which led to their closure at the end of 2004. In the case of the Red Thread the cutting back of subsidies was defended by the argument that a special organisation to defend the interests of prostitutes was no longer needed since prostitution now was normal work and thus labour relations could be regulated in the same way as in other sectors through (negotiations between) employers' organisations and unions. This argument completely denies that, as the government itself states in its report (p. 33), 'legalising a sector that was illegal for nearly a century is not simply a matter of amendments to legislation and a new policy'. Redress of a backlog of more than 100 years requires an active emancipation policy from the state, e.g. information campaigns, support of sex workers organisations and/or special provisions to support prostitutes in claiming their rights.

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

Another complaint is that the registration system of the police to identify victims of trafficking is misused to register prostitutes who in no way give reason to suppose that they are victims of trafficking. Already in 1997 the Registration Chamber (now College Persoonsbescherming) judged that it is not allowed to register prostitutes solely on the ground of belonging to a specific professional group as this constitutes a violation of their privacy. In addition, prostitutes suffer from increased identity controls by the police, in some cases leading to their arrest and detention, without the possibility of judicial review.⁷⁷

m. Female labour migrants and working permits

Women comprise half of the migrants to the Netherlands (2003: 48%, statline.cbs.nl). A substantial number of them are labour migrants. However, precisely those sectors in which predominantly women are employed - prostitution and domestic work - do not give access to a legal working permit, social security and protection by labour law. As a result migrant women working in these sectors are especially vulnerable for exploitation and abuse. The Dutch NGOs are of the opinion that the exclusion from legal working permits and labour law protection of work that is predominantly done by women constitutes a form of indirect discrimination which is in violation of article 11 CEDAW. Moreover, migrants coming to the Netherlands to work as nurses - again a sector in which women are overrepresented - are subjected to specific immigration rules that provide for fewer rights than the general labour migration law regime.

⁷⁷ As a result of case law of the Afd. Rechtspraak Raad van State..

n. No labour rights for domestic workers and au pairs

The increasing labour participation of national Dutch women without the corresponding increase in state provision for care of pre-school children, the increasing costs of childcare, the push towards 'privatisation' of the caring services and the general ageing of the population, have led to a massive increase in demand for domestic workers in private households - particularly in the areas of childcare, the care of the elderly and the handicapped. Migrant women from Asia, Latin America and Africa, and more recently from Eastern Europe are increasingly filling this demand. However there is no official recognition of work in the private household as proper work or as a category for immigration. Therefore the majority of migrant women are recruited informally and work in conditions without protection of their rights as workers, women or migrants. Domestic work in private households is now the main employment sector for migrant women in the European Union. For those newly arrived, particularly those who are undocumented, it is virtually the only employment available apart from prostitution.⁷⁸

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

The only possibility to obtain a legal residence permit is a one-year, dependent staying permit as au pair. The au pair regulation, however, is not qualified as work but as 'cultural exchange'. At the same time, it allows for au pairs to work 30 hours per week, an almost fulltime job according to current standards. In practice this is often even more. A research report (*For Money or Van Gogh*) on the position of au pairs⁷⁹ showed massive violations of the rules with regard to the labour relation between the au pair and the guest family (more than 30 working hours per week, less than 2 days off, type of work performed, payment). Au pairs thus provide for cheap and flexible workers who are not protected by labour law and do not build up any rights. Remarkably enough, the government itself also uses the term work when discussing the au pair contract, but consequently denies the labour character of the au pair contract when it comes to attaching rights to it.

In a judgement dated 11 February 2004 the Court of Appeal in Leeuwarden decided in a case brought forward by the union FNV that the situation of that particular au pair in fact was equivalent to an employment relationship and that the legal minimum wage should be paid. According to the Court, if an au pair contract meets the requirements of Art. 7:610 Civil Code – that is: the performance of labour in a relation of authority against wages during a certain time period – the contract must be qualified as a labour contract.⁸⁰ That is, independent of the qualification of the contract by the parties themselves, the content of the labour or the number of hours worked. In fact this implies that any au pair contract in which the activities of the au pair go beyond the activities of a normal member of the household should be qualified as a labour contract.

The above mentioned research report 'For Money or Van Gogh' shows that a considerable number of au pairs are in the same position as the Polish au pair in this court case. The report was discussed with Parliament and a few measures aimed at improvement were taken. On 1 June 2004 a temporary call centre for au pairs was started at the IND. Complaints should be directed to the police and the Labour

⁷⁸ See *A house is not a home, Enhancing Migrant Women's struggle for their rights and well-being*, Commission for Filipino Migrant Workers, <http://www.cfmw.org>.

⁷⁹ Frank Miedema, Bob Post, Clara Woldringh, *For money or Van Gogh? Au pairs and their guest families. Evaluation of the au pair regulation*, ITS 2003. According to this research, 14% (according to the guest family) to 69% (according to the au pair) of the au pairs work more than 30 hours.

⁸⁰ Court Leeuwarden 11 februari 2004, No. 0200379.

Article 11, employment

Inspectorate. As far as we know no report is published as yet. Summer 2005 the FNV affiliated union FNV Bondgenoten discovered that several au pair recruitment agencies offer au pairs for care for elderly and disabled people. The union requested the Labour Inspectorate to look into the issue. There is no news since then.

Rather than denying the work character of the au pair-relation, it should be considered to qualify the au-pair contract as a labour contract. This would also be more in accordance with the Civil Code, the Migrant Labour Act (Wav) and EG-law.⁸¹ Moreover, it would provide au pairs with the instruments to defend themselves against abuse and would enable labour unions to play a role in this respect.

o. Termination of maternity allowance of independent entrepreneurs

In 2004, the Dutch government blocked access to the Invalidity Insurance (Self-employed Persons) Act; part of this Act was a financial allowance related to pregnancy and maternity for female entrepreneurs. This allowance was only introduced in 1998, since research showed that most women entrepreneurs could not afford the contribution to private invalidity insurances. In 2004 the government ignored the earlier reasons for introducing the act and the pregnancy and maternity allowance, and simply stated that it was part of the 'normal risks' of an entrepreneur to make arrangements for pregnancy and maternity-leave. Unlike the government states in its report to CEDAW, the government did not consider how to arrange the payment's after the Act's repeal. No alternative arrangements (except for the special group of cleaners and carers who work as self employed persons on a contract) were made; the government keeps repeating that it is a matter of entrepreneur-risk and private insurance.

For many entrepreneurs private insurance for invalidity, and more specific for pregnancy and maternity allowance is no option. The contributions are rather high, and most insurance companies use a waiting period of two years before a pregnancy and maternity allowance can be claimed.

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

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

Besides the termination of the Invalidity Insurance (Self-employed Persons) Act (see previous paragraph), many other social security laws were adapted in recent years. Individual rights and individual independence are no longer key-words (as they were in the earlier policies on economic independence, see article 3); people will have to fall back on the income of their partner (or on welfare if they have no earning partner) more often and quicker. Several changes effect women harder than men. government and Parliament did not pay much attention to this gender specific effects of changes in the laws; no Gender Impact Assessments were conducted. CEDAW requires that the gender-specific effects are recognized, and that appropriate measures are taken to overcome the negative effects. In the report the government does not pay attention to this aspects of social security.

⁸¹ See Spijkerboer, a.w., p. 32 ev.

The Unemployment Act

The Unemployment Act did undergo several changes. In stead of a longer-term allowance of a lower percentage of the old income, a short term but higher allowance is provided. This means that women have to fall back on the income of their partners earlier. A longer, but lower allowance would provide more economic independence⁸².

Until recently, the period of the allowance depended from the age of the employee; this has been changed to the number of years a person did actual work. This means that women who re-enter the labour market after some years of taking care of the household have less rights to an allowance. This effect is amplified because the possibility to count 'caring for young children-years' as working years is limited.

The Invalidity Insurance Act

The Invalidity Insurance Act was also adapted on several points.

People with so called 'soft diagnoses' (for example whip-lash, M.E., burn-out) have to undergo a double medical examination. This group exists mainly of women. Due to this double examination many women lost their allowances, or were not granted one. This does not only effect their economic independence (they have to fall back to unemployment allowances for the first period, and after that to their partner or social welfare), but also limits their possibilities to take part in reintegration programmes.

In the Invalidity Insurance Act, the allowance depends from the income a person should be able to earn with a job he or she still can do, in comparison with the (income of the) previous job someone did do. If someone works part-time, the comparison will be made with other part-time jobs. From October 2004 the question whether a possible job does actually exist as a part-time job is not longer relevant. This measure also unequally effects women, as they have more part-time jobs (70% of the women works part-time).

Work and Welfare Act

In the Work and Welfare Act, also single parents (mostly women) of young children (up to 5 years of age) are obliged to look for a job. If they do not cooperate, their welfare allowance is cut down. Although recent figures show that more single mothers are entering the labour-market, the overall effects of this measure are not known. Again, the only fact that women do not receive the allowance anymore, does not automatically mean their situation and that of their children has improved. What is the level of the jobs (content and income), are they regular jobs or mainly temporary projects; is the childcare sufficient; do women manage to cope with work, care for children and their own needs, how many fall out.

Plan of Action Women and WAO

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

⁸² We use 'economic independence' in the old 'feminist' way (to have own financial means, independent from the partner) and not in the way the government uses the words (independent from state allowance or social security). See also article 3.

q. Concerns about the financial position of elderly women

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

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

r. Women face accumulation of poverty risks

In its report the government recognises that women are more likely than men to be affected by an accumulation of poverty risks. The government determines women of ethnic minorities and single women as groups requiring extra attention. The poverty-monitor 2005⁸³ confirms this and concludes also that in all age-groups the percentage of low income is lower amongst women than amongst men.

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

	Totaal x 1000	totaal %	mannen	vrouwen
totaal	1338	8,8	8,1	9,4
< 18 jaar	431	12,5	12,6	12,5
18-24 jaar	81	7,4	6,9	8,1
25-34 jaar	184	8,8	7,3	10,4
35-44 jaar	222	8,9	8,3	9,5
45-54 jaar	148	6,7	6,5	6,9
55-64 jaar	153	8,4	7,5	9,4
65-74 jaar	67	5,5	4,0	7,0
C 75 jaar	52	5,8	3,3	7,2

a preliminary figures.

Source; CBS (IPO'03)

The biggest differences are within the group above 75 years: a group in which single women are overrepresented, and in the group of 25-34 year, in which a lot of single parents.

The monitor determines the following groups, requiring special attention in the nearby future:

- people between 55-64 of age (in part, single persons and people with medical limitations)
- those unable to work and people with a chronic illness

⁸³ Social Cultural Planbureau (SCP) and the Central Bureau for Statistics (CBS).

NGO Shadow report on the implementation of CEDAW in the Netherlands

- households with financial problems who do not make use of (legal) provisions
- single parents and single women
- ethnic minorities with low income

The monitor gives no answer to the question whether providing unpaid care is a risk factor for poverty. The Dutch NGOs would like to know the role of this factor, because most unpaid care is done by women, and because unpaid care will become more important in the next years (see the new law on Social Support as described under article 12). If providing unpaid care is a risk factor for poverty, what does this mean for the policy of the government?

The government describes in its report that regarding poverty consultations are taking place within the ministries involved, where relevant, to determine ways in which the differences between the problems faced by men and women could be taken into account in target objectives and measures. This sounds very good –it could well be a good example what NGOs mean when asking for a clear structure to describe problems, set objectives and take measures- and the Dutch NGOs really would like to know the outcomes of these consultations and the follow up of the National Action Plan: what are the targets and objectives; what measures will be taken.

Article 12, health

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

The government report to CEDAW should contain information on the health of and healthcare for women. In its last concluding observations, the CEDAW Committee explicitly asked for detailed information, disaggregated on gender and ethnicity. The Dutch report does not give this detailed information, nor does it contain an overview of the position of women regarding health. The report addresses some issues, but misses the overall-information and major developments in the health-system. Even two major changes in the health system are not mentioned. From January 2006 the health-insurance system is totally reformed, and on 1 January 2007 the new Law on Social Support (Wet Maatschappelijke Ondersteuning, WMO) will be enforced. Both system-changes will have an impact on women, but both are not mentioned in the report to CEDAW. This changes will be discussed in the following paragraphs.

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

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

Since January 2006 the health insurance system in the Netherlands is totally reformed. Before, the Netherlands had two systems: a national health service system for people with lower incomes, and a private insurance system for the higher incomes. From 2006 there is one system. All citizens have to make an arrangement with an insurance company, which is obliged to offer a basic-policy to everyone. Everyone has to pay the premium; families with lower incomes receive some compensation. People who make no or little use of healthcare, receive a part of their premium back. Insurance companies and 'health providers' have to make arrangements; people can only make use of the services of 'providers' with a contract with their insurance company. Despite requests from NGO's and despite earlier recommendations to subject all major changes in health policy to a Gender Impact Assessment, no such assessment was carried out. Therefore, we do not now what the impact of the new system on the position of women is and will be. However, there are some concerns. Part-timers are disproportional affected as the premium is nominal (instead of related to the income). Besides that, the compensation is related to the family income (in stead of the individual income⁸⁴), which means that a second income within the family will decrease the compensation. Moreover, there is a general concern that people who (nearly) live in poverty, will use the compensation (which is paid per year beforehand) for other things, or to pay debts, and therefore will not be able to pay their premiums, and therefore will not be insured. As women are over-represented among the poor (most elderly women without pensions and single-parents); this might effect women disproportional. As women live longer, and often as a single in their last years (this might be decades), they will experience the financial effects for a longer period. For example: elder people need medical treatment; and therefore will not receive part of the premium back. Given those concerns, and given the CEDAW obligation of equal access to health for women, a gender impact assessment should have been carried out. It is important that at least from now on the effects on women of the new health (insurance) system will be monitored, with special attention to single mothers and elderly women.

⁸⁴ This is an example of the change in approach towards economic independence, as described under article 3.

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

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

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

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

d. The health of immigrant, refugee and minority women

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

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

The statement of the government that the accessibility of care for ethnic minorities is good, is not funded by statistics. Moreover: CEDAW does not require accessibility in theory, but in practice. Therefore the next sentence of the report, saying that there are differences in the way people from ethnic minorities make use of the provisions is far more important. But no figures are given on this.

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

There is little information about the health situation and the access to healthcare of undocumented women. Nevertheless there are serious indications that in particular pregnant women and women with young children are affected by the exclusion of undocumented migrants from access to medical care (see art. 9). Although officially an exception is made for health care before, during and after giving birth, the available information shows that in practice the law has increased the barriers for women to make use of pre-natal care, medical control after giving birth and infant welfare services, because they fear being registered and expelled.⁸⁵ Moreover, hospitals and medical practitioners fear that they will not receive payment for medical care supplied to undocumented migrants, since they only get reimbursed if they can show that they are structurally burdened by undocumented immigrants who cannot pay the bill. In the light of Art. 12 and General Recommendation no. 6, the Dutch NGOs deem further research on the health situation of undocumented women and their access to pregnancy and maternity care necessary, as has also been recommended by the ACVZ in its report. Moreover, it could be considered to exclude health care from the linkage principle. This would also be in the interest of the public health.

f. Sexual and reproductive rights: access to contraception limited

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

Recent research shows that girls are more often confronted with sexual compulsion than boys (18% vs 4%), and that girls do have more problems with accepting their own body and genitals⁸⁶. This requires special measures.

As a result of the linkage Act, which is discussed earlier in this chapter, undocumented women, are not entitled to have free, legal abortions, like any other citizen of the Netherlands has.

Compensation for anti-conception terminated

The Dutch government does not report on an important issue regarding the sexual and reproductive health of women. In 2004 the government decided to terminate the compensation of the costs of contraception for women over 21 by the public health service. Most health insurance-companies followed this limitation. In the new health insurance system, contraception is not included in the basic insurance policy, while most medication is. Most companies only offer compensation for contraception in extra policies, for which extra premium has to be paid. It can be expected that this measure has a negative effect on the reproductive rights of women, especially of women with lower incomes; it might even be one of the causes of the increased abortion numbers. Already in 2003, Dutch NGO's argued that this measure, which affects only women and limits their access to contraception and by that their sexual and reproductive freedom, is a violation of CEDAW. The Dutch government should at least monitor the effects of the measure on the reproductive rights and health of women, and take measures to prevent or repair negative effects for women.

g. No statistic information on HIV/AIDS and other sexual transmissible diseases

The government report does not contain statistic information on the number of people with HIV/Aids and of the number of new cases of HIV/AIDS and other STD's, disaggregated by sex and ethnicity. With this information missing, it is difficult to judge whether the measures taken are

⁸⁵ See e.g. report ACVZ, p. 37; Spijkerboer, a.w., p. 44 ev.

⁸⁶ Outcomes of the study 'Sex under 25' Rutger-Nisso Groep, 2005..

sufficient, and whether it is necessary to take special measures to combat HIV/AIDS and other STD's among (specific groups of) women.

In general it can be said that most measures (with most money involved) are still aimed at the group of homosexual men; but without statistical information this can not be evaluated.

The standard screening of pregnant women on HIV/AIDS appears to be effective, but figures would be welcome.

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

Over the last years the tolerance zones for street prostitution in a number of big cities (The Hage, Amsterdam, Rotterdam) have closed down. The tolerance zones provided street workers with a safe place to work in combination with a drop-in centre, which offered basic provisions, such as medical and social care, coffee, condoms, clean needles, sanitary provisions and information about, for example, safe sex, trafficking in women and forced prostitution, the role and possibilities of the police and of other assistance services. The Johannes Wier Foundation carried out a research into the consequences of the closure of the tolerance zones in two of the big cities for the health and welfare of the women concerned.⁸⁷ They concluded that by closing the tolerance zones the women have no access anymore to the provisions mentioned, since no comparable provisions have been realised. Those women who kept on working the streets now work under less safe conditions. Moreover, it has become more difficult for them to ask for assistance or to report to the police in case of forced prostitution, trafficking or violence from clients. The decision to close the tolerance zones was taken without the participation of the women concerned. The authorities expected that by their repressive policies street prostitution would largely disappear or that women would leave prostitution. However, many women continued to (illegally) work the streets. In practice therefore, the main effect has been that they have become invisible and unreachable for health care and social workers. The reasons for closing down the tolerance zones were mainly public order arguments, in particular the public nuisance caused by clients and pimps. However, the main ones who are affected by the closure are not the clients or the pimps, but the women themselves. They are deprived of a safe working place and the connected provisions. Women are thus disproportionately affected, which can be considered to be a form of prohibited (indirect) discrimination. They conclude that the protection and promotion of the right to health of sex workers has been a subordinate consideration in the decision to close the tolerance zones. In this respect a more active coordinating and guiding role of the national authorities is recommended.

⁸⁷ *The closing down of tolerance zones in big cities and the right to health of women*, Marianne Bruins and Joke van Erkel, Johannes Wier Stichting, Amersfoort, 2005.

Article 14, rural areas

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

The government report on article 14 is rather chaotic. It is no comprehensive piece, but does exist of some loose topics. The fact that national and international policy are mixed up does not help either. The report should contain detailed information on the position of women in rural areas (although rural is relative in the Netherlands), disaggregated by age and ethnicity. The report does only contain figures on female workers in agriculture and horticulture (although this has little to do with combining work and care, in which paragraph the table is placed). The report should contain information on the specific situation of women in rural areas regarding work (employment, availability and use of childcare), education (level of education, accessibility and use of all forms of education), health and health care (provisions, accessibility, use), social life, political participation etc. The next step should be a description of the objectives of the government, the measures the government will take to achieve this objectives and the way it will monitor the results.

b. Studies and experiments are not appropriate measures

In its report on article 14, the government does mention several studies (“Space for Time”, “Building for Collaboration”, “International Good Practices”, “Taakcombineerders...”) and a gender impact assessment (on the fourth national environment policy plan), without mentioning the outcomes, and without mentioning whether and how the conclusions will be translated into government policy and measures. The government also describes several experiments, again without mentioning the results, and with no information on whether and how the government will implement this results in its own policy. For example: what will the government do to establish the ‘service points’ that can provide a variety of services like shops along with childcare (p. 77). Only labelling it as good example will not do the trick.

Under CEDAW, it is the obligation of the government to take all appropriate measures; the government can not limit itself to mention some nice ideas.

c. Only the international policy has mainstreamed gender

The fact that within one policy strategy, only the international component has mainstreamed gender (‘Sustainable Action’, Gov. Report, page 77), is characteristically for the policy of the Dutch government. Overall, the section for international development of the ministry of Foreign Affairs has implemented the concept of gender mainstreaming rather well (see also article 3), while other ministries more or less fail to do so⁸⁸. The Dutch NGOs do not understand that the Dutch government just describes this ‘double standard’ without any explanation.

d. Labour participation of women lower in rural areas

Even after correction for factors as age, education and care for young children, the labour participation of women in the agrarian rural areas in the Netherlands is considerably below the average, and far below the labour participation of women in the urban conglomeration of Western Holland⁸⁹. The

⁸⁸ See also the interim reports of the Visitatiecommissie Emancipatie, february 2006.

⁸⁹ *Regional differences in labour supply*, CBS Social Economic Trends 1^e kwartaal 2006.

labour participation of men is higher, and not much different in the various regions. The Dutch NGOs would like to know which measures the government will take to increase the labour participation of women in rural areas.

e. Participation of women in decision making in rural interest is low

Research on the participation of women in reconstruction processes in rural areas⁹⁰ showed that the voice of women in these processes is still hardly heard, due to their under representation in interest groups. The Dutch NGOs want to know what the government is willing to do about this.

f. Social and cultural infrastructure in rural areas

The social and cultural infrastructure in rural areas is declining. Community centres disappear from the smaller villages, as are other meeting points, such as schools, shops and bank-offices. Women are more often working at home, and more often dependent on public transport (which is also declining). Therefore, women are more dependent on provisions in their neighbourhood, and are struck disproportionately by this deterioration in provisions.

The Dutch NGOs would like to know which measures the government will take to ensure access for women in rural areas to social and cultural provisions.

⁹⁰ Project 'Equal Opportunities for rural women', 2001.

Article 15, equality for the law

a. Law on Names: see article 16

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

Article 16, family life

a. The gap between desired equality and factual inequality

In family law, equality of men and women is the aim. However, the factual situation of men and women in marriage and family relations is unequal. Overall, women do care more for the children, do have less jobs and less income than men, and do have less property. Ignoring this factual inequality in family law and court practice, means that women are discriminated.

Family law used to be an area with a lot of sex-discrimination, both in the law and in (court)practice. The Dutch government did make a lot of changes to eliminate this discrimination, which is a good thing. However, the Dutch NGOs are concerned that in the effort to achieve equality, the factual inequality that still exists between men and women is passed over.

Parental control and caring duties

Since 1998, the joint legal custody of both the father and the mother regarding the children is maintained after divorce. It is up to the parents to make arrangements on the place where the children live, parental access etcetera. The court will take a decision on the topics parents can not agree on. The fact that in most marriages women had the responsibility for the children is not acknowledged after the divorce. Often women feel that their care for the children is not appreciated well. During marriage their husbands did not want to take their part in caring, and after the divorce they claim legal custody (control) and parental access. For most women, parenthood means the actual care for the children; unpaid. For a lot of men, parenthood means the power to make decisions about the children (including influence on the way the woman is establishing her life with the children), and the right of parental access. By disconnecting rights (legal custody and parental access) and duties (the factual care), this in-equality is maintained by court practice⁹¹. See also the paragraph on parental access.

Alimony

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

Divorce proceedings

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

⁹¹ An example of complete disconnection of rights and duties is the decision of the Higher Court of Amsterdam of 27 January 2005, in which the legal custody was appointed exclusively to the father, while the children remained with their mother, who cared for them.

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

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

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

Although the Dutch government does make a lot of work of combating domestic violence, intimate partner violence against women hardly plays any role within family law and family court practice. In The Netherlands, at least 21% of the adult female population suffers from intimate partner violence committed by their male (ex) partner (see also article 1, domestic violence).

Intimate partner violence and parental access

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

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

New legislation on divorce proceedings and domestic violence

The government is planning new legislation on divorce proceedings, in which agreements by the partners regarding the children will be a condition for getting divorced. This assumes equal positions and equal skills of the partners; in many cases this equality is fiction. Also in cases of intimate partner violence, in principal the victim has to negotiate with the perpetrator before she can get a divorce. Only under strict conditions (for example when a woman stays in a shelter), she can make a parental plan by herself, and present it to the court. But even then, the parental plan has to include a provision for parental access; and the court still can refer the partners to mediation as a condition for susceptibility. The Dutch NGOs are of the opinion that victims of domestic violence should not be obliged to mediate or negotiate with the perpetrator before being allowed to ask for a divorce.

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

Research and training

This paragraph of the shadow report is based on information from judges, lawyers and workers within the Child Care and Protection Board; official data are not available. The Dutch NGOs would welcome a research on the way domestic violence is dealt with in family court, as well as a research on the prevalence of domestic violence in connection to arrangements of parental access and custody.

In recent years, both family judges and advisors of the Child Care and Protection Board have become more sensitized to the seriousness of domestic violence. However, this should be improved by training of all family judges and advisors of the Child Care and protection board.

d. Law on Names still not in accordance with CEDAW

In its previous Concluding Observations (no. 38-39) the Committee considers that the present Law on Names contravenes the basic principle of equality, in particular Art. 16(g), and recommends the government to review the Law on Names to bring it in accordance with the Convention. However, the legislation that is described in the current government report, is the same 1998-legislation which underlied the Concluding Observations of the CEDAW-Committee of 2001. The state report fails to mention that no action has been undertaken to bring this law in accordance with the Convention, as required by the Committee. It is still the father who has the ultimate decision if the parents cannot reach an agreement as to the family name of the child. This problem is the more urgent since the government intends to introduce the same rule for non-married couples (instead of the present provision which defines that in case of disagreement the child gets the name of the mother).⁹² Moreover, an evaluation of the effects of the new law, as announced in the previous state report, has not been carried out so far.

e. Sham marriages

One of the things that is not discussed in the state report concerns the continuing critique on the gender biased application of the Sham Marriage (Prevention) Act. Research shows that Dutch women with a foreign partner are more likely to be subject of control on the basis of this act than Dutch men with a foreign partner.⁹³ This is in accordance with the general stereotype that women are supposed to follow their husbands: if the couple chooses the country of the female partner as domicile this is suspected on forehand. Moreover, a number of the indications that are used to suspect a sham marriage are gender biased, in particular the willingness to follow the partner to his/her country and the existence of a huge age difference.⁹⁴

⁹² Bill No. 29 353.

⁹³ Betty de Hart, *Thoughtless women. Mixed relations in nationality and immigration law*, diss. KU Nijmegen, 2002.

⁹⁴ Zie Spijkerboer, a.w., p. 16 ev.

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

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

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

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

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

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