



**Shadow report of the Dutch NGOs on the response of the Kingdom of the Netherlands to the request of the Committee on the Elimination of Discrimination against Women in its Concluding Observations (CEDAW/C/NLD/CO/5, para 52) to provide, within two years, information on the steps undertaken to implement the recommendations in paragraphs 27 and 29.**

**53<sup>rd</sup> session 1 - 9 October 2012**

**Dutch CEDAW Network, Utrecht July 2012  
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**This report is submitted by the Dutch CEDAW-Network on behalf of the following NGOs:**

- African Sky (organisation of African Women in the Netherlands)
- Aletta E-Quality, Institute for Gender Equality and Women's History
- CoMensha/La Strada Nederland (Anti-trafficking Coordination Centre/La Strada Netherlands)
- FairWork (prevention and fight against modern forms of slavery)
- Femmes for Freedom (prevention and fight against the various forms of marital captivity)
- Fier Fryslân (shelter organisation)
- FNV Vrouwenbond (Federation of Dutch Unions Women's Union)
- MOVISIE - kennis en aanpak van sociale vraagstukken (MOVISIE - Netherlands centre for social development)
- Nederlandse Vrouwen Raad (Netherlands Council of Women)
- NJCM (Dutch section of the International Commission of Jurists)
- Stichting de Rode Draad (Foundation The Red Thread, sex workers rights organisation)
- Rights4Change (achieving change by using human rights)
- Soa Aids Nederland and Aidsfonds (Sti Aids Netherlands and the Aidsfund)
- Stichting Religieuzen Tegen Vrouwenhandel (Dutch Foundation of Religieuses against Trafficking in Women)
- TAMPEP International Foundation, European Network for HIV/STI Prevention and Health Promotion among Migrant Sex Workers.
- Tiye International (umbrella NGO of 21 national organisations of Black, Migrant and Refugee (BMR) women in the Netherlands)
- Vereniging voor Vrouw en Recht Clara Wichmann (Association for Women and Law Clara Wichmann)
- Vluchtelingenorganisaties Nederland (Refugee Organisations in the Netherlands)
- Vrouwen Tegen Uitzetting (Women Against Deportation)
- WO=MEN Dutch gender platform

## **Shadow report of the Dutch NGOs on the follow-up report of the Kingdom of the Netherlands to the Concluding Observations of the Committee CEDAW/C/NLD/CO/5/Add.1**

53<sup>rd</sup> session 1 - 9 October 2012

In their comments the NGOs follow the structure of the government report. They also discuss issues which the government fails to mention in its report, but which – in the view of the NGOs – should not be missing.

### **Introduction**

Early 2012 the NGOs in the European territory of the Kingdom of The Netherlands were consulted during the preparation of The Netherlands follow-up report. They, however, only learned through the website of CEDAW that the follow-up report had been submitted.<sup>1</sup> The NGOs note that many of their recommendations are not reflected in the report. As far as known, the NGOs in the Caribbean part of the Kingdom were not consulted at all, whereas no information is available about consultation of NGOs by the Dutch government in the 'special municipalities' Bonaire, Saba and St. Eustatius. Unfortunately the NGOs in the European territory of the Kingdom were not able to establish contacts with NGOs in the overseas territories of The Netherlands, among other factors due to the severe financial constraints of the Dutch CEDAW-Network and other NGOs involved, and difficulties in finding the right contacts.

The NGOs suggest the Committee to recommend the government of Kingdom of the Netherlands to consult NGOs in both continents for its 6<sup>th</sup> report and to facilitate the process of shadow reporting.

### **Concluding Observation 27 Violence against Women**

***27. The Committee urges the Netherlands Antilles and Aruba to promptly enact legislation providing for temporary restraining orders to be imposed on perpetrators of domestic violence. The Committee also calls upon Aruba to provide training to the police, law enforcement personnel and health personnel so that they may properly investigate and deal with domestic violence. The Committee urges the Netherlands to ensure that the specificities of domestic violence targeting women be fully taken into consideration in the formulation of the new plan of action against domestic violence starting in 2011. It also reiterates its call on the Netherlands to ensure without any further delay that free legal aid is provided to all victims of domestic violence. While acknowledging the need to respect the best interests of children, the Committee urges the State party not to use the joint plan for parenthood as a legal precondition for starting divorce proceedings and in no case to impose it on women victims of domestic violence.***

- 1. The Committee urges the Netherlands Antilles and Aruba to promptly enact legislation providing for temporary restraining orders to be imposed on perpetrators of domestic violence. The Committee also calls upon Aruba to provide training to the police, law enforcement personnel and health personnel so that they may properly investigate and deal with domestic violence.*

### **The Caribbean territory of the Kingdom lags behind**

In the opinion of the NGO's the government indirectly acknowledges in para 4 and 5 that all islands in the Caribbean territory of the Kingdom lag behind with respect to an integrated policy to combat domestic violence.

Despite CEDAW's urgent request to promptly enact legislation providing for temporary restraining orders, no such steps have been taken. It is disappointing that the follow-up report limits itself to mentioning that victims of domestic violence can ask the court to impose a restraining order on the perpetrator. The fact that victims in practice hardly made use of this possibility was the very reason for

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<sup>1</sup> Response of the Kingdom of the Netherlands to the request of the Committee on the Elimination of Discrimination against Women in its Concluding Observations (CEDAW/C/NLD/CO/5, para 52), date of distribution 20 April 2012.

the introduction of the legislation on temporary restraining orders in the European territory of the Kingdom. The 'special municipalities' Bonaire, St Eustatius and Saba need to be included in municipal policies on domestic violence on an equal footing with municipalities in the European territory of the Kingdom.

2. *The Committee urges the Netherlands to ensure that the specificities of domestic violence targeting women be fully taken into consideration in the formulation of the new plan of action against domestic violence starting in 2011.*

### **Achievements of the policies on domestic violence**

In para 6 the Dutch government refers to the country-wide policy on combating domestic violence since 2002.

The NGOs acknowledge the fact that the Dutch government has achieved progress through the implementation of such country-wide policies, like the earlier identification of domestic violence, thus limiting the damage for the victims by allowing for interventions at an earlier stage.

Facts and figures show, however, that prevention of domestic violence is far from successful, due to limited resources and a lack of systematic, coherent and effective policy approaches. Prevention activities like information campaigns are taking place and may have some effects, but in order to achieve a substantial reduction of the number of victims of domestic violence a systematic and coherent approach is needed.

This is confirmed by the evaluation report on the national policy on domestic violence of the Ministry of Safety and Justice in 2011, to which the government refers: *"At present, it is not possible to determine categorically whether the national policy to tackle domestic violence has been effective, because of a lack of research on the operation of some of the measures and a lack of monitoring of the policy's results. As regards the policy theory and its plausibility, it can be concluded that the policy is founded on a coherent theory. Evidence has been found in the scientific literature for most of the assumptions, or at any rate indications that the assumptions are plausible. This warrants the conclusion that in theory the policy should be able to achieve the envisaged objectives"*.<sup>2</sup>

As to prevention the evaluation concludes: *"few measures have been taken in the areas of prevention and avoiding intergenerational transmission of domestic violence" and "major consideration should be given to further development of measures for the prevention of domestic violence; prevention activities should focus on children and young people to ensure a lower prevalence of domestic violence among them than in the preceding generations."*

### **Lack of further development of knowledge**

The evaluation report also points at another shortcoming of the policies on combating domestic violence: the lack of a nationally coordinated research and development programme.

The NGOs could not agree more! There is too much emphasis on temporary projects, concrete action, quick interventions and show off. And there is too little analysis, monitoring and evaluation, hardly use of academic research or good practices from other countries and almost no commissioning of researches. Some of the big municipalities, like Amsterdam and Rotterdam, try to fill this gap, but this is far from ideal from the perspective of efficiency and knowledge dissemination.

### **The Council of Europe Convention on preventing and combating violence against women and domestic violence**

The government of The Netherlands participated actively in the preparations and negotiations that resulted in the Council of Europe Convention on preventing and combating violence against women and domestic violence. The government's report also mentions the intention to ratify the convention in 2012 before the summer.

Ratification requires the development of a comprehensive National Action Plan and the installation of an independent co-ordinating body. The convention prescribes the content of a National Action Plan (analysis, mission, plan of execution, resources, monitoring and evaluation) that ought to include prevention as well as protection and support. The Convention moreover requires the formulation of a gender-specific framework (an issue that has been raised by CEDAW several times) and to take into

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<sup>2</sup> Significant / Impact, *Landelijk beleid huiselijk geweld – theoriegestuurde evaluatie periode 2002 – 2011*. Ministerie van Veiligheid en Justitie, Wouter Jongebreur, Ruben Lindenberg en Janine Plaisir, WODC 2011.

account social risk factors such as power inequalities between men and women and between adults and children. Also risk factors within families, like financial problems/unemployment, problems in upbringing, education and communication, divorce, and individual problems like addiction to alcohol and other drugs and other mental disorders must be considered.<sup>3</sup>

Through the ratification process the Dutch government can address the gaps and shortcomings that have been pointed out by its policy evaluation, CEDAW and the NGOs.

### **The need of an integrated approach of policy and practice**

The government report refers to a co-ordinated approach at national level. This suggests that all ministries involved (Safety & Justice, Health & Welfare, Internal Affairs, Education & Emancipation) share the same vision and implement a co-ordinated programme.

According to the NGOs this is not the case: there is no joint plan of action and no joint research programme. Each ministry has its own projects, which in itself also points to a lack of continuity. Municipalities and organisations in the field are being hampered by the lack of co-ordination at national level. For already a number of years the government has announced its intention to present an integrated National Action Plan, but up till now it has failed to do so.

Recently the government cancelled a consultation that was scheduled in the ratification process of the Council of Europe Convention on preventing and combating violence against women and domestic violence, and postponed once more the development of a National Action Plan until after the elections and the formation of a new government. The NGOs are concerned about the postponement. In their view the formulation of a comprehensive policy on combating and preventing domestic violence should not be delayed.

The NGOs suggest CEDAW to urge the government to present a National Action Plan by the end of the year 2012 ultimately. The National Action Plan should entail both the European and the Caribbean territories of the Kingdom.

### **The roles of the municipalities and of the national government**

More and more responsibilities with regard to the implementation of policies on domestic violence are being transferred from the national level to the level of municipalities. The NGOs agree that to a certain extent policies need to be implemented at local level, for example the development of local prevention policies and practices and the management of local and regional cooperation in addressing actual cases of domestic violence.

The national government, however, cannot withdraw itself from all responsibilities and must guarantee access to services country-wide. Victims do not always want to use recovery services in the same community where the violence occurred. Moreover, local governments are recently faced with huge budget cuts that may result in major differences in service levels between municipalities, and aggravate a situation in which it is not allowed to provide support to victims from other regions. It can also lead to a decrease in more complex prevention policies.

The national government even refrains from activities that should be done at national level, such as facilitating the development of knowledge about domestic violence, the further development of methods for prevention and intervention, innovation, monitoring, evaluation, etc.

The NGOs are concerned that the combination of decentralization and financial cuts will lead to a lower level of local services for victims. At national level the NGOs fear the deterioration of tasks that typically need to be co-ordinated and facilitated at national level, such as monitoring, knowledge development and the development of effective prevention programmes.

### **A general and gender-neutral approach replaces targeted approaches to violence**

Until recently general policies on domestic violence, and policies targeted at specific groups of victims (like children and men) and at specific forms of violence (like sexual child abuse, FGM, honour-related violence and forced marriages) existed alongside each other.

Recently, however, the emphasis has shifted to general and gender-neutral policies, without assessing whether these are comprehensive enough to address specific forms of violence against women.

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<sup>3</sup> A summary of the Gender Perspective in the Convention (CAHVIO) is attached in Annex 1.

Apart from the loss of adequate services for victims of these specific forms of violence, this shift leads to a loss of knowledge and experience. Moreover, this general and gender-neutral policy undermines the notion that the majority of these forms of violence are a clear manifestation of discrimination against women. Yearly approximately 177.500 women are victims of a sexual offence, compared to 10.700 men<sup>4</sup>.

The Government's gender-neutral approach is also reflected in its biennial report: "Safety Monitor"<sup>5</sup>. The published data of victims of sexual offences are not segregated by gender, neither in 2009 nor in 2011.

The NGOs suggest that the Committee urges the Dutch government to apply gender sensitive policies and measures, and to publish gender segregated statistics on sexual offences.

### **Sexual violence**

Domestic violence entails physical, psychological and sexual violence within the family. 3,4% of the sexual offences against women is committed by a spouse or a member of the family<sup>6</sup>.

Domestic sexual violence is often not recognised by professionals in shelters, asylum centres or service organisations. They often do not have sufficient knowledge and experience to address the issue of sexual violence in intake sessions. An integrated policy to combat all forms of sexual violence, including rape and harassment by family friends and acquaintances, is non-existent up till now. Prevention policies seem to be limited to the inclusion of sexuality education in curricula and campaigns targeted at boys and girls.

The National Action Plan should include all forms of sexual violence, including domestic sexual violence, as well as prevention policies and measures.

### **Legal aid to victims of domestic violence**

3. *The Committee also reiterates its call on the Netherlands to ensure without any further delay that free legal aid is provided to all victims of domestic violence.*

CEDAW's call to ensure free legal aid to all victims of domestic violence is not met by the Victims' Status (Legal Proceedings) Act as described in para 7 of the government report. Neither does the assistance provided by Victim Support Netherlands, which although very useful, cannot replace legal aid provided by specialised lawyers. Moreover, the legal assistance provided by the Act and by Victim Support Netherlands is limited to the criminal proceedings and restraining orders concerning the perpetrators.

Victims also need (free) legal assistance in other legal fields, like civil law and family law, immigration law, etc. Both Victim Support Netherlands and professionals in shelters and service organisations lack that kind of expertise. As a result the need for specialised legal assistance in these fields is not always recognised and victims are not timely referred to specialised lawyers.

In general there is a lot of pressure on cutting financial support for legal aid for low-income earners, but for victims of domestic violence this problem is even more pressing – sometimes they have to pay with their lives.

The NGOs suggest that all Domestic Violence Advice and Support Centres are equipped with the legal expertise in all relevant areas needed to provide comprehensive legal support to victims of domestic violence and to timely refer victims to specialised lawyers. Legal aid by lawyers should be free of charge.

4. *While acknowledging the need to respect the best interests of children, the Committee urges the State party not to use the joint plan for parenthood as a legal precondition for starting divorce proceedings and in no case to impose it on women victims of domestic violence.*

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<sup>4</sup> CBS: Slachtofferschap seksuele delicten, vrouwen 2009 (Victims of sexual offences, women 2009)

<sup>5</sup> The Safety Monitor (Integrale veiligheidsmonitor) is published by the ministries of Safety & Justice and Internal Affairs.

<sup>6</sup> See note 4.

The NGOs share CEDAW's concern about the possible misuse of the requirement of a joint plan for parenthood in cases of domestic violence. The evaluation taking place in 2012 should provide more insight in this matter.

The NGOs suggest that the Committee calls upon the Dutch government to provide information on the number of cases in which judges granted or refused a request for exemption from a joint plan for parenthood in its 6<sup>th</sup> report.

## **Other issues**

### **Women imprisoned in their marriages**

Until recently it was hardly known in the Netherlands that some women are forced to stay captive in their marriages, suffering from psychological and/or physical violence by their former husbands, as a result of religious laws. This phenomenon regards the situation of women who are divorced according to civil law, but not according to religious (mostly Islamic or Jewish) law, as well as the situation of women whose divorce is not acknowledged in the country of origin. Often the former husband refuses to collaborate in the religious divorce proceedings. This situation is a violation of Article 2 and 16 of the Convention.

The government has acknowledged the problem, but is not yet coping successfully with this form of violence in the areas of prevention, protection and persecution of perpetrators.

The NGOs suggest the Committee to urge the Dutch government to take any necessary legal and remedial action to combat this phenomenon and to report thereon in its next report.

## Concluding Observation 29 Trafficking in Women and Forced Prostitution<sup>7</sup>

**The Committee urges the Netherlands Antilles to adopt without delay legislation criminalizing all forms of human trafficking. The Committee calls upon the Netherlands to ensure that relevant NGOs fully participate by integrating them into the task force created in 2008. The Committee also calls upon the Netherlands to improve the identification of victims of trafficking by associating relevant NGOs with the process and to ensure that trafficked women are not, in any circumstances, held in immigration detention or other forms of custody. The Committee further urges the Netherlands to comply with its obligations to provide protection to all victims of trafficking regardless of their willingness or ability to cooperate in legal proceedings.**

1. *The Committee urges the Netherlands Antilles and Aruba to adopt without delay legislation criminalising all forms of Trafficking.*

The NGOs note that the Dutch Government refers to the relevant provisions in the Criminal Code of the Caribbean territory of the Netherlands, but does not provide insight in the scope and character of the problem. Nor does it pay attention to the availability of support and protection for victims. The NGOs are concerned that the Dutch Parliament up till now has not paid attention to its special municipalities Bonaire, Saba en St. Eustatius (Parliamentary Debate 16 November 2011). The National Rapporteur on Trafficking in Human Beings has indicated to begin an inventory of the problem on these islands only in 2012. The NGOs have the impression that most of the available resources go to law enforcement and that there are hardly any resources for assistance and support of victims, let alone prevention. Several NGOs are willing and capable to further investigate the extent of the problem in this part of the Kingdom, but there is no funding available to do so.

2. *The Committee calls upon the Netherlands to ensure that relevant NGOs are fully integrated into the membership of the anti-trafficking task force.*

In response to the recommendations of CEDAW, Comensha has been granted official status within the anti-trafficking taskforce. However, the NGOs consider this to be not sufficient. Also organisations that provide direct assistance and support to victims, such as shelters, should be members of the taskforce. Moreover, there are no organisations with expertise on children represented in the taskforce.

In general, there is still a severe imbalance in the taskforce between representatives of the criminal justice system, and NGOs and service providers working from the perspective of the victims. This is the more serious given the persistent limited focus of the taskforce on the needs and interests of the victims.

The NGOs suggest the Committee to call upon the Dutch government to broaden the anti-trafficking task force's perspective and focus, so that the needs and interests of the victims are fully looked after, by means of relevant membership of NGOs and service providers.

3. *The Committee calls upon the Netherlands to improve the identification of victims of trafficking by associating relevant NGOs with the process.*

The NGOs are not convinced by the argumentation of the government why it should not be possible to involve NGOs in the (formal) identification process of victims on a systematic basis.

If victims want to make use of the reflection period (in order to decide whether or not they want to cooperate with the authorities in the criminal investigation and prosecution), they have to report to the police. This is likely to be a deterrent for some victims. According to the NGOs, also relief organisations and lawyers, preferably coupled to shelters that are specialised in receiving trafficked women, should be authorised to identify (possible) victims and apply for the reflection period on behalf of the victim. In addition, methods to start a criminal investigation without a statement of the victim(s) should be further developed and implemented, in analogy to the Covenant on Child Abuse. This would benefit the safety of victims.

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<sup>7</sup> According to Dutch law, trafficking in human beings for forced labour in the sex industry includes forced pornography.

The NGOs further note that the government report lacks figures on the number of victims that applied for a temporary residence permit, the number of applications that was rejected and the number of cases in which a reflection period was granted.

4. *The Committee calls upon the Netherlands to ensure that trafficked women are not, in any circumstances, held in immigration detention or other forms of custody.*

The government report notes that (possible) victims of trafficking in immigration detention are informed by the NGO FairWork about their rights and the options for cooperation with the criminal justice authorities. FairWork, however, reports that there are still (possible) victims in immigration detention. They cannot reach all (possible) victims in detention as they have only limited access to detention centres and are dependent on signals of trafficking passed on by the staff of detention centres and others.

Prolonged efforts to improve the identification of (possible) victims in detention are therefore still needed. FairWork, moreover, reports that in some cases (possible) victims who went to the police for help were denied the right to file a report and subsequently put in immigration detention. In other cases (possible) victims in detention were denied the right to file a report. This is in clear violation of existing policies. It moreover appears to be difficult to submit a complaint against such practices.

The NGOs suggest the Committee to urge the Dutch government to take measures to ensure that (possible) victims are always given the opportunity to file a report, and that proper complaint procedures are in place.

5. *The Committee urges the Netherlands to comply with its obligations to provide protection to all victims of trafficking regardless of their willingness or ability to cooperate in legal proceedings.*

#### **Access to protection**

The report of the Dutch government notes that since January 1<sup>st</sup> 2011, victims of trafficking who are not able or willing to cooperate with the authorities may be entitled to a residence permit if the victim cannot be expected to cooperate because of serious threats from the trafficker and/or because of physical or mental disabilities.

The report, however, does not provide information on the number of applications submitted and granted under this new rule. The NGOs as well as the network of lawyers specialised in trafficking are not aware of any cases in which this new rule has been applied.

The NGOs suggest the Committee to urge the Dutch government to ensure that this new rule is properly published and to provide figures on the number of applications submitted, granted and rejected under this new rule in its next report.

The report also reiterates the possibility to apply for a residence permit on humanitarian grounds. This possibility, however, only applies to victims who have previously been granted a temporary residence permit on grounds of their cooperation with the police. It therefore does not provide relief to victims who are not willing or able to cooperate with the authorities (and thus not qualify for a temporary residence permit).

For victims who are not able or willing to cooperate with the authorities and who do not qualify for the new rule, the only remaining possibility is to call upon the discretionary power of the Minister of Immigration and Asylum<sup>8</sup>. It is then up to the Minister to decide upon the application on a case-to-case basis. From 2010 onwards the Minister, however, has hardly used this instrument. NGOs, moreover, perceive this instrument as utterly problematic as it is unclear and unverifiable on what criteria decisions are based, thus risking creating inequality before for the law.

The NGOs therefore remain of the opinion that the government should change its official policy and provide *all* victims of trafficking adequate protection and assistance, independent of their capacity or willingness to cooperate with the authorities in the prosecution of their traffickers.

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<sup>8</sup> Art. 3.4 sub 3 Vb 2000.

As to minor victims, according to both the Convention on the Rights of the Child and the 2011 EU Directive on preventing and combating trafficking in human beings and protecting its victims (Directive 2011/36/EU of 5 April 2011), any decision in regard to the granting of residence should be based on the interest of the child. In some cases it might be in the interest of the child to be granted permanent residence if (there is a serious suspicion that) the child is a victim of trafficking. In other cases it might be in the interest of the child to return to their family. In both cases, however, the actual circumstances of the minor should be leading and the decision should be independent of whether the child cooperates with the criminal justice authorities and/or the criminal proceedings.

### **Recent developments that negatively impact on the position of victims of trafficking**

The NGOs are very concerned about three recent developments that undermine access of (possible) victims to assistance and protection.

The first is the recent Parliamentary debate on the alleged abuse of the B9-regulation (by persons who are supposed to falsely pretend to be victims of trafficking), and the measures taken by the government to counteract this alleged abuse, *despite the fact that it could not be substantiated by any figures*<sup>9</sup>. Members of Parliament even suggested that a decision not to prosecute is proof of a false statement by the victim. This suggestion alarmingly conflates dismissal of a case because of evidence problems and dismissal because of abuse of the regulation. Victims of trafficking may withdraw or change their statement because of fear for their traffickers, or not being able to declare in a consistent and detailed way due to their being traumatised. As a result victims may not be believed and be considered as having made a 'false' declaration.

Moreover, due to their complex nature, trafficking cases are often difficult to prove: on an average only 68 % of the cases brought to court leads to a conviction for trafficking, whereas 23 % of the cases is dismissed before it comes to a trial<sup>10</sup>. The NGOs consider this indeed as a reason for concern, which underlines the importance of (further) developing investigation methods that are less dependent on the statements of the victims.

The announced measures to combat the alleged abuse of the B9-regulation include 1) intensifying prosecution of victims for alleged false declarations, 2) revocation of the temporary staying permit as soon as the prosecutor drops the case, including abolishment of the possibility to remain legally in the country while submitting a complaint against the decision not to prosecute, and 3) the abolishment of the reflection period for victims who escaped the trafficking situation more than three months ago.

In the view of the NGOs, these measures heighten the threshold for access to assistance and protection, and reflect and stimulate a systematic attitude of distrust and suspicion towards (possible) victims of trafficking, which will have a direct negative impact on (possible) victims.

Moreover, abolishment of the reflection period for victims who escaped the trafficking situation more than three months ago, is in violation of Article 13 of the Council of Europe Convention on Action Against Trafficking, which prescribes State Parties to provide for a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Remarkably the Minister does not refer to the obligations of The Netherlands under CEDAW in his letter about the measures to sharpen the B9-regulation<sup>11</sup>.

The NGOs suggest the Committee to urge the Dutch Government to reconsider these measures and to ensure that all (possible) victims have access to the reflection period and are allowed to remain in The Netherlands when they file a complaint against the decision not to prosecute.

Secondly, the recent criminalisation of illegal stay (when a previous entry ban has been issued) by the Implementation Act of the EU Directive on return of illegal immigrants (Directive 2008/115/EC of 16 December 2008), could dissuade undocumented victims of trafficking from reporting to the police. This threshold will most certainly be heightened when the new bill on criminalising all forms of illegal stay will be adopted by the Dutch Parliament.

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<sup>9</sup> Letter of the Minister for Immigration and Asylum to the Second Chamber of Parliament 15 November 2011 (28 638, nr. 57) and 11 May 2012 (2012-0000286136)

<sup>10</sup> Period 2000-2008, *Trafficking in human beings, Ten years of independent monitoring*, National Rapporteur on Trafficking in Human Beings, 2010, pp. 130 and 212.

<sup>11</sup> Letter of the Minister for Immigration and Asylum to the Second Chamber of Parliament 15 November 2011 (28 638, nr. 57).

Both above mentioned developments are closely connected to the current political climate in which restrictive immigration policies increasingly dominate over a human rights-based approach to trafficking. Remarkably enough systematic distrust of victims seems to play a lesser role in regard to victims of so called 'loverboys'. This is probably due to the fact that combating this form of trafficking is less connected to immigration policies as most of the 'loverboy' victims are Dutch subjects. A human rights approach seems to be more accepted here.

The third point of concern is the bill that introduces mandatory registration of prostitutes and the criminalisation of unregistered prostitutes and their clients, while raising the allowed age for prostitutes to 21 and over<sup>12</sup>. The NGOs note that the follow-up report does not pay attention to the bill, despite the fact that there is a clear relation with trafficking. By now, the bill has been adopted by the Second Chamber of Parliament and will be discussed by the Senate in October 2012.

NGOs fear that criminalising prostitutes who are not able<sup>13</sup> or not willing<sup>14</sup> to register themselves, will prevent these groups from turning to the police in case of trafficking or other abuses, and deter prostitute's clients from reporting suspicions about trafficking to the police. This concern is justified by the experience of social workers that male sex workers only dare to ask for help after they have turned 18 because they (incorrectly<sup>15</sup>) think that before that age it is punishable to work in the sex industry.

Criminalisation of undocumented migrants and unregistered prostitutes will, moreover, give traffickers extra means to control their victims by threatening them that if they go to the police they themselves are punishable and will be imprisoned. Making an exception for victims of trafficking, as is proposed, does not solve the problem because victims can never fully rely upon application of the exception, for example because the police might not recognise them as victims of trafficking. Moreover, most victims will not be aware of such exception.

NGOs and health organizations are concerned that the proposed mandatory registration and criminalisation will increase the vulnerability of prostitutes for trafficking and other forms of violence, while adding to their stigmatization and undermining their right to privacy and family life. They also expect that traffickers will force their victims to register, as registration provides a semblance of legitimacy, whereas independently working prostitutes will avoid registration to protect their privacy. Moreover, the most vulnerable groups, i.e. undocumented prostitutes and those below the age of 21, are excluded from registration and therefore by definition criminally liable, as they are committing an offence when working as prostitutes.

A related problem is that at the same time as the very costly measure of registration is proposed, funding for outreach work has been cut.

The NGOs want to point out that the government did not take into account the recommendations of CEDAW in regard to the bill<sup>16</sup>. As far as the NGOs are aware, no risk assessment has been made.

The NGOs suggest the Committee to urge the government to reconsider the mandatory registration of prostitutes and the criminalisation of unregistered prostitutes, and to at least carry out a proper risk assessment.

## **Other issues**

The NGOs also want to point out a number of other problems in regard to the implementation of the B9-regulation and the assistance of victims.

### **EU citizens who are victims of trafficking**

There is a lack of clarity in regard to the treatment of victims of trafficking from other EU countries.

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<sup>12</sup> Bill to regulate prostitution and combat abuses in the sex sector (Parliamentary Papers nr. 32 211).

<sup>13</sup> Because they are under 21 or undocumented.

<sup>14</sup> Because they want to protect their privacy and for fear of the consequences for their family or future career if it becomes known that they work or have worked as prostitutes.

<sup>15</sup> Currently minor sex workers are not punishable. This will change when the new law is adopted, as sex workers below the age of 21 will not be allowed to register and thus will be punishable.

<sup>16</sup> Concluding Observations CEDAW 2010, para 30 -31.

Although they strictly do not need the B9-regulation to legalise their stay, they equally are in need of shelter and assistance to which they are not automatically entitled as EU citizens. Although the B9-regulation notes that also victims from EU countries may make use of the B9-regulation, in practice this leads to confusion as formally the B9-regulation is part of the Aliens Act that regulates the position of non-EU citizens.

### **Reflection period**

It is not allowed to work during the reflection period, which acts as an obstacle, especially for victims of trafficking in other industries than the sex industry.

### **Access to interpreters**

Due to a change in legislation per January 1<sup>st</sup> 2012, there is uncertainty if and when victims of trafficking are entitled to a (free) interpreter. Victims who stay in the specialised & women shelters, for example, are entitled to an interpreter, but victims who do not stay in these shelters are not. The Ministry of Welfare is working to solve this problem, but did not manage to do so over the last half year. This has far reaching consequences. Many service providers, for example, hesitate or refuse to use an interpreter because they do not know if its costs will be reimbursed.

### **Access to shelter**

There is still a shortage of shelters. At the moment of writing this shadow report, the coordinating organisation Comensha had a waiting list with 25 victims on it. This is not acceptable. The number of available places in shelters will be expanded per 15 June 2012 with 20 extra beds, but this will not solve the problem. The B9-regulation stipulates that victims are entitled to a shelter, but it is not elaborated how this right can be executed. Currently it depends on the will of the municipality and the shelter concerned if there is a place available.

The NGOs advocate for a national policy framework on the care of victims, including access to a shelter and a (free) interpreter, in which agreements are made between the State and the municipalities with corresponding funding.

## Annex 1

### **Gender Perspective (Council of Europe Convention Against Violence against Women and Domestic Violence – CAHVIO))**

Violence against women and domestic violence cannot be addressed without looking at gender equality issues. Women may be subjected to violence because of their gender. Certain types of violence, in particular domestic violence, affect women disproportionately. Consequently, the convention frames the eradication of violence against women and domestic violence in a context of achieving de jure and de facto equality. Its Preamble recognises the structural nature of such violence, which is both a cause and a consequence of unequal power relations between women and men and which limits the full advancement of women. To overcome inequality, the convention requires states to implement gender equality policies and to empower women. It is not about treating women as helpless victims but about making sure they can rebuild their lives.

While the focus of the convention is on all forms of violence against women, which includes domestic violence committed against women, the convention also recognises that there are other victims of domestic violence, such as boys and men. This may include gay men, transgender men or men that do not conform to what society considers to constitute appropriate behaviour. States can choose whether or not to apply the convention to these victims of domestic violence. Applying a gender perspective to these groups of victims is equally important.

Many forms of discrimination, harmful practices and gender stereotypes are the starting point for violent behaviour. For this reason, the convention specifically tackles gender stereotypes in the areas of awareness-raising, education, the media and the training of professionals. It also creates the obligation to ensure that both protective and support measures as well as investigations and judicial proceedings be based on a gendered understanding of violence.

The concept of gender is thus firmly embedded in the convention.