

**CEDAW Preliminary Session Working Group
Presentation on behalf of Dutch NGO CEDAW-Network, the Dutch Section of the
International Commission of Jurists and the Dutch Equal Treatment Commission
1 August 2006
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At first, we want to thank the CEDAW Committee for offering us this opportunity. We present two reports: The shadow report of the Dutch NGO's, called 'Taking Women's Rights seriously?', and the comments of the Dutch Equal Treatment Commission.

As our time is limited, we can not discuss all our findings during this session. However, we will be glad to answer your questions. For this moment, we would like to touch on a number of topics. These topics have been selected during a session with fifty women from different NGOs.

Two of the selected topics: the stereotyping of 'minority-women', and the position of immigrant, minority and refugee women who are victim of violence, will be covered by my colleague Marjan Wijers in her presentation.

I will then concentrate on the abolition of the maternity allowance for independent entrepreneurs, and finish with a few words on the way the Dutch Government is currently dealing with women's issues and CEDAW-obligations.

Stereotyping of black, immigrant and refugee women

In its 2002 Concluding Observations the Committee expressed its concern about the continuing discrimination against immigrant, refugee and minority women. We share that concern. Dutch NGOs appreciate that the government report pays specific attention to their position. However, we are very concerned about the tendency to increasingly locate gender equality issues within the migration and freedom of religion or anti-Islam debate.

Discrimination and violence against women are presented as problems typically linked to migrant communities and ethnic minorities, rather than an issue that runs through all cultures, including the Dutch. Migrant women, especially Muslim women, are stereotyped as 'suppressed', 'lacking awareness', and 'unemancipated'. It is illustrative that emancipation policies have been narrowed down to migrant women. Cultural power struggles seem to be literally fought out over the heads of women, or, more precisely, their head scarfs.

At the same time, especially - but not only - Muslim women are increasingly confronted with discrimination, both at schools and in the labour market. In 2004, for example, 60% of the complaints with the Dutch Equal Treatment Commission about discrimination on the basis of religion concerned women wearing a head scarf (art. 2, p. 38; for more information see the report of the Equal Treatment Commission, p. 8ff).

In its report on the national implementation of CEDAW, the Advisory Board on Immigration Affairs formulated as a principle that 'policy measures should, where possible, 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’.

Government policies do not reflect this principle. On the contrary. Stereotypes of migrant women as passive victims are used to legitimise measures that tend to disempower migrant women instead of creating the conditions for them to emancipate and claim their rights. For example, the argument of prevention of forced marriages is used to restrict the right to family reunification. Women’s issues are thus deployed to justify repressive immigration policies.

No gender impact assessments

Even when it is clear that policies will disproportionately affect women, no gender impact assessments are made. For example, according to the government, it had no use to make a gender impact assessment on the new law on family reunification ‘since its outcome would not affect the policy changes, as these were already agreed upon’ (art. 9, p. 57 & 58 ff). If gender impact assessments are made, no consequences are taken from it (art. 9, p. 57).

The new law on family reunification contains a range of new more restrictive requirements: raise of the income requirement, abolition of exemption from the income requirement for single parents with young children, a rise of the age for marriage migration from 18 to 21 (contrary to nationals who are allowed to marry at 18), the foreign partner has to take an integration test in his or her home country before qualifying for a entry permit. Despite a recommendation of the Advisory Board on Immigration Affairs no Gender impact assessment has been made. NGOs would like to know if the Dutch government is willing to evaluate the specific impact of the new requirements on women and take adequate measures if they appear to indirectly discriminate against women.

NGOs are also interested to learn if the government is willing to carry out a gender impact assessment on the new Integration Act. Under the new Integration Act immigrants have to pass an expensive mandatory integration test (costs can run up to 6000 €) in order to qualify for an independent residence permit (art. 9, p. 63). Women make up the majority of immigrants with a dependent residence permit. They generally earn less than men. If they have no own income, they are dependent on the willingness of their partner to pay for the course and the exam in order to be able to acquire independent residence status.

Lack of protection against violence

Also when it comes to protection against violence, policies fall short.

Since recently victims of domestic violence with a dependent residence permit can qualify for an independent staying permit, but only on the condition that they press charges against their husband or partner. Even if the existence of domestic violence is undisputed, they are refused a residence permit if they don’t want their husband - and often the father of their children - being prosecuted (art. 9, p. 57 ff). Recently there have been a number of - partly contradictory - judgments by different courts whether or not the state should take into consideration other evidence, if the domestic violence is undisputed but the woman concerned did not press charges and/or can show a medical statement.

It is a well known fact that the majority of the victims of domestic violence, irrespective of their ethnic background, is not willing to press charges against their partner with all the consequences entailed. Most women just want the violence to stop. NGOs are interested to

know if the government has statistics on the number of migrant women who actually applied for and were granted an independent residence permit under the new law. They would also like to know if the government is willing to change the requirement of pressing charges, if in practice this appears to act as an insurmountable barrier.

Sexual violence is still not recognized as a ground for asylum. Moreover, the law barely leaves space for female refugees who fail to make reference to traumatic instances of persecution, such as rape, during the initial procedure. They are precluded from pursuing their asylum claim, unless they can demonstrate that their very trauma prevented them from speaking about the sexual violence to the authorities (art. 9, p. 61 ff).

In principle repeated asylum applications are only dealt with when there are 'new facts'. The fact that a woman was not able to speak about sexual violence during the initial procedure (which in case of the 'accelerated procedure' does not take more than 48 hours) is not counted as a 'new fact'. Following severe critique from Human Rights Watch, the INS now has the possibility to admit a repeated asylum request, if the woman can demonstrate that trauma prevented her from relating the sexual violence to the authorities during the initial procedure. This decision is not subject to judicial review. NGOs are interested to learn in how many cases the INS decided to take a repeated asylum application into consideration because of demonstrated trauma, and if the government is willing to adapt the law to enable judicial review of a refusal to deal with a repeated asylum request by female asylum seekers undergoing trauma.

In most cases victims of sexual violence do not qualify for asylum, while at the same time they do not qualify for a regular staying permit because their application is 'asylum related'. NGOs would like to know how the government wants to solve this problem.

Finally they would like to know if the government keeps statistics on the number of gender violence related asylum applications and the percentage in which asylum or residence on other grounds is granted.

Minor unaccompanied asylum seekers who are not recognized as refugees are turned out into the street if they turn 18 and make an easy prey for traffickers (art. 9, p. 50).

Dutch NGOs would like to know which measures the government is willing to take to protect minor unaccompanied asylum seekers against becoming victims of trafficking.

Victims of trafficking in women only qualify for protection if and as long as they are useful as witnesses for the prosecution (art. 6, p. 48 ff).

Victims of trafficking are entitled to a temporary residence permit for the time of the criminal proceedings. After the closure of the court case they again are threatened with deportation. Victims who do not press charges are not entitled to assistance and protection. Dutch NGOs are interested to know if the Dutch government is willing to solve the serious shortcomings of the current policies with regard to victims of trafficking, in particular the exclusion from assistance and protection of victims who are not able or willing to act as witnesses, the extremely restrictive and unrealistic policies in granting long term residence permits to victims who might lack adequate protection of their government on their return and the lack of long term perspectives of victims of trafficking.

Abolition of the ban on brothels

Dutch NGOs support the abolition of the ban on brothels, which makes it possible to extend the existing protection of workers by labour and civil law to those working in the sex industry. Rights benefit all women in the sex industry, no matter their

position: it gives them the instruments to defend themselves against abuse and violence and to improve their working conditions. Combating violence and promoting rights, in the view of the Dutch NGOs, are two sides of the same coin.

However, policies have continued to focus on state regulation and control, rather than on measures to support the empowerment of prostitutes, improve their position and enable them to transform the sex sector (art. 11, p. 79). Moreover, NGOs share the concerns of the Committee on the position of undocumented migrant sex workers and victims of trafficking. The exclusion of non EU prostitutes from working on a legal basis in the sex industry deprives them of the protection national prostitutes enjoy and pushes them into the illegal and unprotected sector, thus adding to their vulnerability for exploitation and abuse (art. 6, p. 50 ff).

The law categorically prohibits the issuing of working permits for work in the sex industry, thus relegating migrant sex workers to the illegal and unprotected circuits in which they are more vulnerable to abuse and violence. NGOs wonder how the exclusion of non EU migrant prostitutes from the legal sex sector and the effects thereof, relate to the obligation of the state under art. 6 to take adequate measures to combat trafficking in women.

They would also like to know which measures the government intends to take to support the emancipation of prostitutes, to overcome the existing barriers that prevent sex workers from standing up for their rights, to clarify labour relations in the sex industry, to increase possibilities to work independently or in small women-owned brothels, to combat discrimination of sex workers and to develop exit programs for those who want to leave sex work.

Female labour migrants

Similar problems are faced by migrant domestic workers. They have virtually no possibility to work on a legal basis and build up rights. The only possibility is the au pair contract, which is not considered work but cultural exchange. This is so even when au pairs are legally allowed a 30-hours working week, which in other labour sectors is considered to be an almost full time job (art. 11, p. 80 ff).

NGOs are interested to learn which measures the government intends to take to enforce the proper enforcement of au pair contracts, since research shows that in many cases au pairs even work (far) more than 30 hours per week. They would also want to know which measures the government is willing to take to improve the position of migrant domestic workers, in particular access to regular working permits and regularization schemes.

Women comprise half of the migrants to the Netherlands, many of them are labour migrants. However, precisely those sectors in which predominantly women work – domestic work and prostitution – are excluded from access to legal work permits and labour law protection. This raises the question how such exclusion relates to the prohibition of discrimination of women and the obligation to equal treatment in employment.

Abolition of maternity allowance of independent entrepreneurs

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

repeal of the Act, the government stated that article 11-2 of CEDAW does not imply an obligation to maintain a pregnancy and maternity allowance for female entrepreneurs. The government stated that CEDAW obligations do not extend beyond the obligations of ILO Conventions, and that therefore the state is not obliged to protect *all* its (working) citizens, which means some groups might be excluded. We challenge this. CEDAW obliges the government 'to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances' (art 11-2). No exception is made for female entrepreneurs. Such an exception would, in our view, be in contradiction to the main aim of CEDAW: the elimination of all forms of discrimination against (all) women.

We are also of the opinion that article 11-2 requires a result (introduction of leave with pay or benefits); the state's obligation is not limited merely to making an effort.

Moreover: while the Convention requires introduction of maternity leave with pay or benefits, it is clear that it prohibits termination of an existing provision to achieve that aim.

We would be interested to learn the opinion of the CEDAW Committee as to whether the termination of the maternity allowance for independent entrepreneurs constitutes a violation of article 11-2.

The role of the government in the emancipation process

Dutch NGOs fully endorse the two-track policy adopted by the government. This includes specific emancipation measures, as well as a range of other measures to integrate a gender perspective in all areas of regular policies (gender mainstreaming). However, we have to conclude that the Dutch government is merely paying lip service to this two track policy. The co-ordinating and initiating role of the state regarding emancipation has been almost abandoned, instruments are hardly used, NGOs have disappeared due to state funding cuts, gender mainstreaming is failing, and government emancipation policies have shrunk to the integration of migrant, refugee and minority women.

Conclusions: Not taking CEDAW-obligations seriously

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

1. The government did not follow the recommendations of CEDAW in its 2001 Concluding Observations.

Examples:

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

In its consideration of the previous report, the Committee concluded that the existence of a political party (SGP) which excludes women from membership constitutes a violation of

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

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

2. In its report, the government does not account for its failure to fulfil objectives related to CEDAW obligations; it merely sums up projects and policies which are somewhat related to the position of women.

3. The government does not acknowledge its national responsibility for achieving gender-equality, improving the position of women, and combating gender stereotypes, despite decentralisation or gender mainstreaming.

4. The government has adopted the legally indefensible position that the CEDAW Convention is not legally binding and cannot be cited in national courts.

Within the Dutch legal system, individual citizens can directly invoke and have enforced rights deriving from international conventions before national courts. The notion that (provisions of) CEDAW give rise to rights of individual citizens also underpins the CEDAW Optional Protocol. However, both in its policy document *A safe country where women want to live*, and in the SGP law case, the Dutch government states that (provisions of) CEDAW cannot have direct effect. Dutch NGOs disagree with this opinion, and are very interested to learn the opinion of the CEDAW Committee on this topic.

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);

In the policy document *A safe country where women want to live*, the government states that CEDAW obligations are obligations 'to make an effort', instead of obligations to achieve the elimination of all forms of discrimination. Dutch NGOs disagree with this opinion, and are very interested to learn the opinion of the CEDAW Committee on this topic.

6. The government has not implemented in its policies the conclusions and recommendations of studies on the implementation of CEDAW.

For example:

The government report contains two appendices. One is a summary of an in-depth study on the significance of article 5a of CEDAW to the elimination of structural gender discrimination, and the other is a report on the position of female foreign nationals in Dutch immigration law and policies in relation to CEDAW. However, the body of the report pays no

attention to the contents of either study. It remains unknown whether the government agrees with the conclusions of these reports, or is willing to implement their recommendations in its policies. Dutch NGOs are concerned that this attitude is typical. A range of studies are referred to, but their outcomes and recommendations are rarely implemented in regular policy.

7. Although both article 2f and article 5a of CEDAW oblige the government to assess existing and new laws and policies with regard to their impact on the position of women as well as on the existence of underlying stereotypes, the Dutch government hardly conducts gender impact assessments. Moreover the government does not implement the recommendations of the few gender impact assessments that were conducted.

Examples:

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

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

A good example of a Gender Impact Assessment that is not followed is the one on the life course saving scheme. The main conclusion of the GIA was: 'All in all, the Life-course Savings Scheme is more important for the possibilities it offers for funding pre-pension arrangements (particularly for the higher income groups) than for combining work and care. The scheme does virtually nothing to bring closer the government's emancipation objectives'. The Assessment further states that if the government wants the life course savings scheme to contribute to the goals of emancipation policy, more substantial measures are needed. In particular, it would help to make its use financially more attractive: a structurally advantageous arrangement for both parental leave and care leave is legitimate.

The government reacted to this Gender Impact Assessment by saying it saw no reason to adjust the life course savings scheme. NGOs find this incomprehensible, especially since the government is not taking any other action to achieve a more balanced division of work and care.

In 2007, the new Act on Social Support will enter into force. The Gender Impact Assessment on this Act concluded that the law has negative effects for women, both as care-providers and as care-receivers. The government failed to amend the (draft) law to take into account the findings of this assessment. NGOs consider the pushing through of this law, without measures to prevent or overcome the negative effects on women's health, working conditions and possibilities, as a violation of CEDAW obligations under article 12. NGOs would like to know if the Dutch government intends to institute measures to ensure that the new Act on Social Support does not weaken the position of women, and, if so, what these measures will be. If the government is unwilling to undertake such measures, NGOs would be interested to learn how the CEDAW Committee regards this in light of the state's obligations under CEDAW.

8. The government does not disseminate CEDAW and related documents.

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

9. The government does not assess policies and legislation on gender stereotypes and structural discrimination against women.

10. In many areas, Dutch government measures, and the results achieved by these measures, do not fully comply with CEDAW obligations. The government does not acknowledge these shortcomings, and does not indicate what measures it will take to overcome them. The shadow report contains a range of examples; we welcome you to read it.

Thank you for your attention.

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