

ORAL STATEMENT OF THE CEDAW NETWORK AND DUTCH SECTION OF THE INTERNATIONAL  
COMMITTEE OF JURISTS, NETHERLANDS  
to the Committee for the Elimination of All Forms of Discrimination against Women  
on the Fourth Periodic Report from the Government of the Netherlands  
by Margreet de Boer and Marjan Wijers  
22 January 2007

Madam Chair,

First of all, we want to thank you for the opportunity to address your Committee.

My name is Margreet de Boer, and together with Marjan Wijers, I represent the Dutch CEDAW-Network and the Dutch section of the International Committee of Jurists. The shadow report was made with the input from a wide range of organisations and individuals, and signed by 21 NGOs. Those NGOs were also involved in selecting the most important issues to call your attention for.

The Dutch Equal Treatment Commission submitted its own comments on the fourth Dutch Governmental reports. The commission is not present here; we were asked to represent the Commission as well, and are most willing to answer questions on its comments. We added some comments of the Equal Treatment Commission to the text of this presentation.

In our shadow report we concluded that the Dutch government is not taking its CEDAW-obligations seriously. The government response to the questions raised by CEDAW does not alter this conclusion. In our presentation, we will stick to the main issues. In our written statement you will find some more details, recommendations and suggested questions. We also prepared a folder with background-information.

The folder contents: summaries of recent monitors on the position of women, information from the Inspection Commission on Emancipation, and the relevant concluding observations of the ECOSUL Committee.

In this presentation we will pay attention to the following issues:

1. Not taking CEDAW and emancipation issues seriously;
2. Violence against women;
3. Family reunification.

Marjan Wijers will take up the last two issues; I will start with the first one.

**1. Not taking CEDAW and emancipation issues seriously**

*Lack of Statistics*

The statistical information provided by the Dutch government in its answers to CEDAW is (again) not up to date, incomplete, and not disaggregated by both sex and ethnic background.

Example

The statistics on participation in education (Q. 16) are incomplete (e.g. not covering medium and lower education, which is attended by the majority of the students), and not disaggregated by both ethnicity and sex, while these figures are available.

Example

In the answer on question 24 (poverty and pension schemes) the government gives the impression that, because the percentage of women participating in pension schemes is still rising, the problem that a lot of elderly women live in poverty because of insufficient pension schemes will be solved

within a few years. However, the government does not provide figures on the actual income of elderly women (disaggregated by ethnicity as well).

When figures are given, they show that little progress has been made over the last years.

The Emancipation Monitor 2006, which gives an analysis of figures, concludes that the emancipation process has stagnated.

### *Lack of a comprehensive approach*

The answers of the Government are more comprehensive than the Governmental report, but information is still fragmentary and incomplete. A comprehensive approach, including a gender-analysis, goals, results and measures, is lacking. Without it, emancipation policy will not go beyond good intentions and nice projects.

In its responses, the Dutch government again lists a lot of efforts and projects it supports. That is nice, but not what meeting CEDAW obligations is about. CEDAW requires taking all appropriate measures to combat all forms of discrimination of women. It should be the results that count, not the intentions.

#### Example

The Government presents figures that show that the segregation between boys and girls in education (almost no girls study science and technology) has not changed over the past years, despite all the well intended projects that were carried out. The government should be alarmed by this, evaluate why its efforts fail to be effective, and take other measures, amongst which special temporary measures, so that the objectives will be met.

#### Suggested question

What measures, including special temporary measures, will the Dutch government take to overcome the segregation between boys and girls in education, and between men and women in working life?

#### Example

In its answer to question 21, the government points out that employees with flexible contracts tend to be female, and that employees with a temporary contract are more likely of ethnic minority origin. However, this observation does not lead to any specific objective or measure. The fact that women have more flexible jobs, and employees of ethnic minorities groups have more temporary jobs constitutes in itself a form of discrimination, which should be combated by the government. Moreover, it also implies indirect discrimination with regard to the enjoyment of certain rights, in particular the right to family life. See the paragraph on immigration.

### *Inadequate gendermainstreaming*

The policy of gender mainstreaming has functioned as a 'disappearance trick': the government abandoned its previous coordinating and initiating role, and emancipation structures and initiatives disappeared quickly.

Only after the Emancipation Review Committee started evaluating gendermainstreaming within all the ministries, some structures were rebuild, and new initiatives are developed. It is necessary that the new government, which is being formed now, puts emancipation and gender mainstreaming on its agenda again and takes back its responsibility. For this purpose a minister should be responsible for emancipation and gendermainstreaming, supported by sufficient and well trained staff. The concluding report of the Emancipation review Committee will be published early February. In the folder you will find some English information published by the Committee this month.

In its responses to the list of issues and questions to the CEDAW Committee, the Dutch government translates the title of the interim-report of the Emancipation Review Committee ('Dat moet echt beter') as 'Room for Improvement'. This is a veiled (and by that revealing) translation. 'Dat moet echt beter' literally means 'That really has to be done better', or, as the Committee itself translated it: 'Improvement really needed'.

#### Suggested question

What measures will the Dutch government take to ensure that both gender mainstreaming and specific emancipation policy will be anchored, both within the different ministries as well as within the government as a whole, also after the Emancipation Review Committee has finished its work?

### *CEDAW is not taken into account*

The government still hardly conducts gender impact assessments with regard to new policies and legislation. Moreover, the Government does not implement the recommendations of the few GIA's that were conducted. We recommend that at least all new legislation on family law, health issues and social security are subjected to a Gender Impact Assessment.

#### Suggested questions

Can the Dutch Government point out if it is willing to subject new legislation in the field of family law, health issues, migration and social security to Gender Impact Assessments?

As far as we can notice, the government is not taking CEDAW obligations into account when designing or reviewing legislation. Since 2000, only two Explanatory Memorandums of the government (all legislation is accompanied by such a Memorandum) referred to CEDAW.

The first was the Law on Labour and Care (2000). The second was the Legislation regarding a change in the law on matrimonial property (2003), on which a Gender Impact Assessment was conducted by the Clara Wichmann Institute, the expert centre for women and law which closed down in 2004, after its financing by the government was terminated.

When the question of CEDAW compliance *was* raised, for example by the Parliament, the government more than once denied the binding character of CEDAW.

This can be illustrated by the discussion on the maternity-allowance for self employed women. 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 maternity allowance for female entrepreneurs. The government stated that CEDAW obligations do not oblige to protect all its (working) citizens, which means some groups might be excluded. We challenge this.

To our opinion, the answer of the government to the question of CEDAW on this allowance (question 25) is insufficient. The government should have made clear that in the question two different Acts are confused: the general Invalidity Insurance Act (WAO/WIA) and the Invalidity Insurance Act for Self Employed Persons (WAZ). The latter has been repealed. In its answer, the government pretends there is no problem, because women entrepreneurs are able to opt for private insurance to cover the risk of pregnancy. The government does not mention that in reality the great majority of women entrepreneurs can not afford this private insurance. Exactly this fact was the reason for introducing the maternity allowance in the public insurance scheme (WAZ) in 1998.

Moreover, private insurance does not cover the risk of pregnancy during the first two years. This means that women who become pregnant within those years have no access to any pregnancy and maternity allowance at all.

We would like to remind the Committee of the promise the government made in its report: notably to consider how to ensure the maternity allowance after the Act's repeal. We fear that the reference to private insurance is the only consideration of the government regarding this topic.

The Dutch NGOs are still of the opinion that the government violated CEDAW obligations by repealing the maternity allowance of self employed women.

Gender Impact Assessments are also important to review existing legislation and policies. In recent years, several new laws which are expected to have a specific impact on the position of women came into force.

#### Example

Several new laws in the field of health came into force. The new health insurance system never was submitted to a Gender Impact Assessment. The new law on social support was, but the results of this GIA were not followed implemented in the law.

#### Suggested question

Is the Dutch Government willing to assess the actual gender impacts of the new health insurance system and the new law on social support (WMO)?

### *Temporary Special Measures*

In its response to Question 6, the Dutch government does not answer the question of the CEDAW Committee to indicate the Government's position on General Recommendation 25.

In the shadow report (p.19 and 44) we pointed out that there is a discrepancy between the 'European' approach on preferential treatment and the CEDAW approach of temporary special measures. The government's policy on 'preferential treatment' follows the strict, symmetric approach of the European Court of Justice. 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.

In our opinion, temporary special measures should include more, and stronger measures than setting the agenda and campaigning.

## 2. Violence against women

The Dutch Government actively combats violence against women. However, we have some remarks.

### *Gender neutral character of policies on violence against women*

Policies on violence against women are formulated gender neutrally, as confirmed by the government's response (Q. 8, p. 15). This denies its gendered character. However, policies on violence against women of ethnic minorities (honour related crimes, FGM, but also domestic violence) explicitly stress its gendered character. We support such an approach, but challenge the fact that it is taken only with respect to women of ethnic minorities. This unjustly stereotypes them as victims, suggests that unequal gender relations are an exclusive problem of migrant communities, and falls short towards native Dutch women.

#### Example

An example of the narrow focus of the government on women from ethnic minorities is the use of the term 'cultural aspects' instead of 'the elimination of cultural stereotypes', when describing that in its evaluation of what has been achieved (where possible) a distinction has been made between the level of 'legislation, concrete improvements and cultural aspects' (Government report, p. 3).

In reality unequal gender relations are still firmly rooted in native Dutch society. To give a few examples: domestic violence is not only a problem for immigrant women, but also for native Dutch women; women still earn 19% less than men; only 42% of the women is economically independent (that is earning at least 70% of the minimum wage); the combination of work and care is a persistent problem for women; women are still hardly represented in high positions in both the public and business sector.

Combating gender stereotypes and unequal power relationships should be a crucial element of the prevention of violence against *all* women, regardless of their background. If it is not recognised that violence against women is inextricably linked to gender-roles and inequality of power, it is impossible to effectively prevent and combat violence. We expect this to be one of the topics in the coming report on the Netherlands of the UN Special Rapporteur on Violence against Women.

### *Obstacles for women with a dependent residence permit to escape domestic violence*

Migrant women who are victim of domestic violence must press charges against their husband to be entitled to an independent residence permit. This raises an unrealistic barrier (see also p. 57 ff Shadow report). In general only 5% of *all* victims of domestic violence press charges.

Migrant women with a dependent residence permit who become victim of domestic violence only qualify for an independent residence permit if they press charges against their partner (Government report, Q. 11, p. 20). According to the Government report only approximately 12% of *all* cases of domestic violence are reported to the police, and in less than 40% of these cases the victim is willing to make an official complaint (p. 17).

#### Suggested question

Is the government willing to evaluate this requirement and to adapt the law if in practice this appears to be an insurmountable barrier? We recommend that migrant women should also be entitled to an independent residence permit if they can demonstrate the existence of domestic violence otherwise, for example by medical reports, reports of neighbours, the school, social workers, the shelter or others who can support the claim.

#### Integration Act

The Government fails to mention (answer to Q.11, p. 20) that women with a dependent residence status only qualify for an independent staying permit after 3 years if they successfully pass the so called 'integration test'. The costs of this mandatory course and exam can run up to 6000 €. For women it is more difficult to pass this test within the prescribed period. Moreover, it gives the Dutch partner a tool to keep his wife in a dependent position by refusing to pay the fee if the woman has no own income, or by preventing his wife from following the course (see also Shadow report p. 64). In this way the law increases the barriers for migrant women to emancipate and integrate. Despite strong indications that the law disproportionately affects women, no GIA was made.

In general women earn a lower income than men, they more often take care of young children and they are more often illiterate. Especially for women without an own income it reinforces their dependency of their partner. Rather than increasing barriers for migrant women to emancipate and integrate, measures should be taken to ensure their access to free and easily accessible language courses and child care facilities, to stimulate their labour participation and to combat discrimination in the labour market.

One of the principles the Advisory Board on Immigration Affairs (ACVZ) formulated in its 2002 report on the implementation of the Women's Convention in relation to the position of migrant women in immigration and refugee law held that, when possible, measures should give them a position as independent as possible vis-à-vis other private parties whose position is strengthened by immigration law. If that is not possible, the state should offer protection. The ACVZ also recommended carrying out a Gender Impact Assessment before introducing the new Integration Act, which introduces the mandatory integration exam, (see above) and the new law on family reunification (see under para. 3).

#### Suggested question

Is the government willing to follow the recommendations of the Advisory Board on Immigration Affairs and carry out a Gender Impact Assessment on the new Integration Act?

#### *Undocumented women*

Undocumented women who are victim of gender based violence have no access to assistance and protection, with the exception of 'medically necessary' care.

#### Suggested question

Is the government willing to introduce a similar regulation for undocumented victims of domestic or other forms of violence as presently exists for victims of trafficking.

#### *Female asylumseekers*

Female asylum seekers do not qualify for refugee status on the ground of sexual violence, with the exception of FGM. They also do not qualify for a regular staying permit, because of the refugee-related character of their application (Shadow report p. 62 ff).

Human Rights Watch severely criticised the Dutch asylum procedure. One of its effects is that women who are not able to talk about their experience of sexual violence during the initial procedure (which sometimes does not take longer than 48 hours), do not get a 'second chance'. A renewed application will be automatically dismissed, unless they can prove that their very trauma prevented them from speaking about the sexual violence in first instance.

#### Suggested question

What measures will the government take to ensure adequate protection of female asylum seekers who are victim of domestic violence and/or honour-related violence?

#### *Trafficking in women*

The abolition of the ban on brothels and the granting of workers' right to prostitutes is widely supported by the Dutch NGOs, including those working directly in the field. We

firmly believe that rights are the best protection against violence and exploitation, including trafficking in women. However, we have a number of concerns.

- Under the B9 regulation victims of trafficking are only entitled to a temporary staying permit and assistance, if they press charges. We hold that *all* victims of trafficking should have this right, no matter if they are willing and able to act as witness (Shadow report p. 48).

The primary interest behind the B9-regulation is not the protection and assistance of victims, but the prosecution of the offenders. To qualify for a temporary residence permit, protection and assistance victims of trafficking are required to file an official complaint against their traffickers and to act as witnesses. This excludes victims who do not dare to press charges, for example for fear of reprisals against them or their family. In its answers the government confirms that victims who decide not to report to the police and/or decline to act as witnesses are not eligible for any assistance services (Q. 13, p. 20).

In its answers the government does not provide figures on how many victims of trafficking have been granted a permanent residence permit on humanitarian grounds (Q. 13, Government report p. 20).

#### Suggested question

Which measures will the government take to ensure that all victims of trafficking have access to assistance and protection, including those victims who do not dare to file an official complaint and act as witness?

#### Figures

In its report the government presents the number of cases of trafficking reported to the police till 2003 (Q. 12, p. 3). However, the actual number of cases reported to the Foundation Against Trafficking is higher (these also include reports from shelters, social workers etc.). These figures are available and easy accessible. The 2005 annual report of the Foundation Against Trafficking presents the following numbers of cases reported to the Foundation (this includes both foreign and domestic victims):

Year	Number of reports	Index (1992 =100)	Perc. of rise compared to the previous year
2005	424	605	5%
2004	405	578	57%
2003	257	367	-25%
2002	343	490	21%
2001	284	406	-17%
2000	341	487	18%
1999	287	410	26%
1998	228	326	27%
"			
1992	70	100	

- By excluding migrant prostitutes from working legally in the sex industry (Q 14. p. 20-21), the law itself deprives them of protection. It is well known that particularly migrant women are vulnerable to trafficking, and that trafficking especially flourishes in the illegal part of the sex sector. We hold that under art. 6 CEDAW the government is obliged to take all possible measures to prevent trafficking. This implies that migrant prostitutes should be allowed to work in the legal and protected sex sector.

#### Suggested question

Is the government willing to extend protection under labour and civil law to migrant prostitutes and to abolish the ban on working permits in the Foreign Nationals (Employment) Act (Wav) for the sex industry?

- Government policies mainly focus on regulation and control of the sex industry. It is time that the government gives effect to its rights-based approach and takes concrete steps to improve the position of sex workers and to remove obstacles for them to claim their rights.

In its answers the government does not explain which measures it has taken to clarify the rights and obligations of prostitutes and operators after the abolition of the ban on brothels. It also does not mention that after the lifting of the ban on brothels, it terminated the subsidies for two or the three organisations working in the field of sex workers rights (Mr. de Graaf Stichting, Clara Wichmann Institute). Consequently these organisations had to close their doors.

#### Suggested questions

What measures will the government take to improve the position of prostitutes, to support their (labour) emancipation and to remove the obstacles for prostitutes to claim their rights (Q. 14, Government report p. 20).

What does the government mean when it states that 'compliance with social regulations' is poor in the licensed/ legal part of the sex industry (Q. 14, p. 21) and what measures it aims to take to increase compliance.

### **3. Law on family reunification and the right to family life**

Women with a foreign partner - both migrant and native Dutch women - face disproportionate obstacles to live with their partner or unite their family. Since 2001, the income requirement has been raised and the exemption for single parents with small children has been abolished. Women still earn less than men, they more often have temporary, flexible or part time contracts, and more often carry the responsibility for small children. The Foundation Foreign Partner is preparing a collective complaint on this issue under the Optional Protocol.

#### Suggested question

Is the government willing to conduct a Gender Impact Assessment on the new law on family reunification?

#### **Comments of the Dutch Commission on Equal Treatment**

The government states in its report that it aims to increase the number of women in the army, but it does not pay attention to the working conditions (Q. 2). The Dutch Equal Treatment Commission has judged in a number of cases over the last years that the Ministry of Defense acted in violation with the law. This concerned among others discrimination on the basis of pregnancy, unequal pay, and discrimination on the basis of working part-time. Recently, the media have also published a number of serious cases of sexual intimidation and violence. We recommend that the Ministry of Defence pays more attention to the prevention of discrimination against women in its organization.

The government does not answer the question on the number of cases of the Dutch Equal Treatment Commission that subsequently have been submitted to the Court (Q. 5). In 2005 the Court judged on eight Cases, which had previously been submitted to the Equal Treatment Commission. Four of these cases concerned discrimination on the basis of gender.