

**Defective Acceleration:  
the Dutch Emancipation Policy**

**The Implementation of the UN Women's Convention in the Netherlands in 1999**

**Shadow report based on the Second and Third Government Reports (November 1998 and September 2000) and prepared on behalf of the 25th session of CEDAW in New York, June/July 2001**

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**Contents**

**Preface**

**Part I General Comments**

**Chapter 1 Introduction**

- 1.1 One shadow report in reaction to two Dutch governmental Reports
- 1.2 Defective acceleration
- 1.3 The work of the Committee on the Elimination of Discrimination of all forms of Discrimination Against Women

**Chapter 2 The implementation of the Women's Convention in the Netherlands**

- 2.1 The National Reports as an instrument to implement the Women's Convention
- 2.2 The scope of the Women's Convention
- 2.3 The aims of the Women's Convention

**Chapter 3 A review of Dutch emancipation policies**

- 3.1 The Dutch emancipation policy: from hard measures to cultural change
- 3.2 The position of black, migrant and refugee women
- 3.3 The place of unpaid care tasks in the emancipation policy
- 3.4 The national machinery and the emancipation support policy
- 3.5 Mainstreaming

**Part II A discussion of the articles of the Convention**

**Chapter 4 Some preceding remarks on missing articles**

## **Chapter 5 Articles 1 and 3: Human rights and fundamental freedoms**

- 5.1 General Remarks
- 5.2 Article 1 of the Convention
- 5.3 Violence against women
- 5.4 The law against stalking
- 5.5 Domestic violence
- 5.6 The Working Conditions Act and sexual harassment
- 5.7 Sexual harassment in schools and in the medical world
- 5.8 The protection of victims of sex offences

## **Chapter 6 Article 6: Trafficking in women and prostitution**

- 6.1 Trafficking in women
- 6.2 Marriages of convenience
- 6.3 The abolition of the ban on brothels
- 6.4 The position of non-EU migrants in the sex industry
- 6.5 Stigmatising prostitutes through identification legislation

## **Chapter 7 Article 7: Political and public life**

- 7.1 The under-representation of women in politics and government
- 7.2 Towards a qualitative approach
- 7.3 Discrimination by political parties

## **Chapter 8 Article 9: Nationality, rights and aliens laws**

- 8.1 General comment
- 8.2 Nationality rights
- 8.3 The income requirement for family reunification
- 8.4 The granting of an independent right of residence following the ending of a relationship
- 8.5 Towards harmonised family reunification policies in the European Union
- 8.6 The Newcomers Integration Act
- 8.7 Undocumented women
- 8.8 The Linkage Act
- 8.9 The position of women asylum seekers

## **Chapter 9 Article 10: Education**

- 9.1 Care in education
- 9.2 Participation of girls and women
- 9.3 The position of teaching staff
- 9.4 Information and Communication Technology in education
- 9.5 Drop outs
- 9.6 Gender Impact Assessments

## **Chapter 10 Article 11 and 13: Employment and social security**

- 10.1 General remarks
- 10.2 The report on motherhood, parenthood and employment

- 10.3 Women's unequal remuneration
- 10.4 Unemployment amongst women
- 10.5 The positive action policy and the glass ceiling
- 10.6 Facilitating the combination of paid work and care
- 10.7 The dominance of the combination model: towards more diversity
- 10.8 The Daily Routine Committee
- 10.9 Insufficient day care and after-school centres
- 10.10 The proposed change in the taxation system
- 10.11 Unequal treatment in pensions
- 10.12 Repairing effects of past discrimination in pension schemes
- 10.13 The weakening of the position of widows
- 10.14 The obligation of lone mothers with small children to find work
- 10.15 No overtime allowances for part-time workers

### [Chapter 11 Article 12: Health and health care](#)

- 11.1 General remarks
- 11.2 The report on the implementation of Article 12 of the Women's Convention
- 11.3 Care for women who have been the victims of sexual violence
- 11.4 Gender specific health (care)
- 11.5 The consequences of the Linkage Act to the right of illegal women to health care
- 11.6 Health care for older women and black, migrant and refugee women

### [Chapter 12 Article 14: Women in rural areas](#)

- 12.1 General remarks
- 12.2 Economic independence
- 12.3 Social Security
- 12.4 Women in committees and in advisory bodies

### [Chapter 13 Article 16: Personal and family rights](#)

- 13.1 General remarks
- 13.2 The position of women of non-Dutch nationality in family law
- 13.3 Unequal treatment under the Law of names
- 13.4 Unequal treatment under the nobility law

#### **Preface**

When this shadow report mentions the Second or Third Report, it is referring to the reports of the Netherlands to the UN Committee for the Elimination of All Forms of Discrimination Against Women (CEDAW), issued in November 1998 and September 2000. When the national reports are mentioned, this in turn refers to the entire range of accounts and reports concerning the statutory obligatory report to parliament (every 4 years) which for the first time was completed in June 1998 when the first National Report was discussed by a parliamentary committee. In relation to the national report procedure the following studies and reports have been published:

- 'The Women's Convention in the Dutch Legal Order' (preparatory research for the National Report)

- The studies by experts dealing with health (art. 12 of the Women's Convention), motherhood and employment (art. 11) and violence against women (art. 1)
- The first National Report, here referred to as the Groenman Report (a report by independent experts which was directly presented to the Lower House of the Dutch parliament)
- The report of the conference of experts and NGOs on the Groenman Report, which is hereafter referred to as 'The Nijmegen Conference Report'
- The Cabinet's Reaction to the Groenman Report and the Nijmegen Conference Report
- The report covering the discussion of the Groenman Report by the Lower House's Standing Committee for Social Affairs

E-Quality and the author of this report want to express their feelings of deep gratitude to every person and organisation that contributed to this shadow report. Without their input and support this report would never have been written. The presenters of this shadow report would also like to express their support for the remarks and recommendations that were included in the shadow reports submitted by the Dutch Section of the International Commission of Jurists (NJCM).

## **Part I General Comments**

### **Chapter 1 Introduction**

#### **1.1 One shadow report in reaction to two Dutch governmental Reports**

At the end of 1998, the Dutch government reported for the second time to CEDAW on the implementation of the Women's Convention in The Netherlands, in terms of both policy and legislation. Soon after, in September 2000, the government issued its Third Report. Both governmental Reports serve as a starting point for the commentary that is presented here to CEDAW on behalf of a number of non-governmental organisations (NGOs) representing women's rights and women's emancipation in the Netherlands. The [Annexe](#) contains the names of these organisations. E-QUALITY, Experts in Gender and Ethnicity, was responsible for the co-ordination of this report.

The presenters of this shadow report wish to express their concern that, as a consequence of the failure of the government to deliver the Second Report in time and the postponement of the examination of this Report by CEDAW until the Third Report was presented, the focus of attention will now exclusively fall on the Third Report. As a consequence of the fact that a lot of subjects are not dealt with at all in the Third Report this would give an incomplete picture of the (defective) results of the implementation of the Women's Convention by the Dutch government. We therefore hope that CEDAW will read and examine both Reports and will take our commentaries on both reports into consideration.

Following a number of remarks about the results of the National Reports procedure and the effect of the Dutch emancipation policy in general (Chapter 2), this shadow report will concentrate on an article-based discussion of the main points of our criticism of the Dutch policy (Chapter 3).

#### **1.2 Defective acceleration**

The title of this shadow report expresses the presenter's view that the Dutch emancipation policy is currently stagnating. Women's position has remained at the same level for a long time now. For instance, this is demonstrated by the figures reflecting political and administrative participation, which the government presented in the Second Report (p. 41) and Third Report (p. 50). Equally, development has stagnated in terms of participation in employment and the redistribution of unpaid family duties (care). When measured in numbers, women are increasingly participating in employment, but by contrast there has been very little increase in men's participation in domestic and childcare tasks. Although much research has been published that indicates the causes of this stagnation, the government is failing to actively and concretely implement the recommendations that were made by the researchers. The same applies to many of the recommendations that resulted from the Groenman Report on the Women's Convention and the studies that accompanied this first National Report. Another example of this stagnation is the Gender Impact Assessment (GIA); despite the fact that this instrument was developed in 1994, it is still far too rarely deployed. We therefore endorse the government's conclusion, as included in the National Implementation Report 'The Netherlands Five Years after Beijing', that it is not so much a matter of analysing the emancipation issue or its aims, rather it all depends on their implementation. We therefore are very disappointed that both in the Second and Third Reports and in the most recent government Emancipation Policy Plan most of the 'measurements' that the government announces are again studies and reports on subjects that already have been studied extensively in the past. The results and recommendations of these studies have for the greater part been neglected by the government. Both the Second and Third Reports contain a listing of all kinds of 'measures', which at close inspection mainly consist of issuing more studies, more monitoring and giving more information (to officials mainly) by brochures and 'guide books'. Hardly anywhere are the specific goals that are to be obtained by these 'measures' described; this will have serious consequences for the possibilities of evaluating these 'measures' in terms of success or failure. The examples of more concrete projects to improve the position of women that are given in both Reports are often not initiatives of the central government itself, but are the result of initiatives at a local level, often in close connection with grass roots organisations. These projects frequently have to deal with the fact that subsidies are temporary and that pilots, even if successful, are not followed up by structural measures.

### **1.3 The work of the Committee on the Elimination of Discrimination of all forms of Discrimination Against Women**

The Dutch NGOs that are responsible for this shadow report are emphatic in their appreciation of CEDAW's work. Despite the limited amount of time and manpower at its disposal, each year this committee generates a wealth of material (the General Recommendations and Country Reports) from which important hints can be drawn in terms of how the Women's Convention should be interpreted and implemented. The experts and the organisations responsible for this shadow report have exploited this source with considerable enthusiasm although some NGOs find this information difficult to locate. The fact that CEDAW implements an active policy in terms of inviting NGOs to send in shadow reports and provide it with spoken commentary also deserves a great deal of appreciation.

The presenters of this shadow report would also like to congratulate CEDAW on the fact that the United Nations General Council voted unanimously for the optional protocol concerning the individual right of complaint and that the protocol will enter into force on December 22, 2000. They feel that this instrument will provide a valuable contribution to the

implementation of the Convention's criteria. It goes without saying that they are very happy that the Dutch government was among the first to sign (although not yet to ratify) this protocol.

## **Chapter 2 The implementation of the Women's Convention in the Netherlands**

### **2.1 The National Reports as an instrument to implement the Women's Convention**

The Dutch government has promoted the Convention's implementation in the Netherlands through a compulsory system of National Reports preceding the CEDAW report; this can be described as a unique approach. The National Reports that have been completed until now can be divided up into a number of research projects. During the period of the last two Reports to CEDAW, this process culminated into a concluding report that was written by a committee of independent experts (the Groenman Commission) and presented to the Lower House of the Dutch parliament by the Minister of Social Affairs and Emancipation; this was in turn followed by a working conference and an official reaction by the government (Cabinet's Reaction). The Groenman Report and the related research projects have brought about a great deal of material that shows that the Dutch policy is still failing to fulfil the Convention's criteria. Along with a fundamental analysis of the Convention's aims and scope, the Groenman Report also scrutinises a number of important policy areas where there are countless examples of the non-implementation of the Convention's criteria. The government supports a number of these conclusions, but is reticent about implementing the recommendations. Here, this shadow report will provide a number of examples concerning the article-based discussion of the Convention. It is also regrettable that up till now the government has not fulfilled its promise to have the Groenman Report translated into English. This means that CEDAW does not have access to this important document.

*The presenters of this shadow report request that CEDAW should consider urging the Dutch government to provide an English translation of the National Reports' most important conclusions and recommendations, and that this should include not only the parts that have already been completed but also the accounts and reports which will be published in the future.*

### **2.2 The scope of the Women's Convention**

The authors of this report are particularly encouraged by the fact that the government has asked a commission of independent experts to draw up a report on the aims and scope of the Women's Convention. This opens the way to rectify the premises that were made during the (lengthy) ratification procedure concerning the Convention's limited scope.

The Groenman Commission has provided an extensive, solid and well-described interpretation of the Women's Convention's scope and obligations. On the basis of studying CEDAW's General Recommendations and national commentaries, and legal-academic literature, the Commission has established inter alia: (1) that the Convention encompasses the government's obligation not only to make an effort but also to come up with clearly-measurable results; (2) that the Convention concerns not only the relation between government and citizens but also affects citizens mutually (the horizontal effect); (3) that the Convention similarly covers private life; (4) and, in particular cases, that the citizen can directly appeal to the Convention in courts of law (the direct effect). In addition, the Commission felt that the Convention's obligation to take 'all appropriate measures' has

different implications in prosperous countries than in others, and that the principle of 'good faith interpretation' means that the government is obliged to interpret the Convention in a dynamic way.

In its Cabinet's Reaction, the government has roughly echoed the Groenman Commission's views. This represents a considerable step forward in terms of the reticent stance of both government and parliament during the ratification procedure. However, these new views have not as yet entered legal practice. There are still very few citizens (and lawyers) who appeal directly to the Convention and B when ever this issue is brought up in a court case B most judges feel that the UN Women's Convention has no direct effect whatsoever. Moreover, time after time, the formulation of new legislation shows that the Treaty's commitments are either considered in a way that is unsatisfactory or are ignored entirely.

The Dutch government has the important duty of promoting the implementation of the Convention in both legislation and legal practice. A possible way of doing this is to entrust the Dutch Equal Treatment Commission not only with a task that is based on the General Equal Treatment Act but also with checking whether the provisions of the Women's Convention are fulfilled.

The government's promise to set up a national expertise centre to cover the equal treatment of women still has to be fulfilled. In the Second Report (p. 109), the government confirms these plans; it mentions a broadly-based information centre that would concentrate on all national and international equal treatment legislation. This centre would probably also cover the struggle against all other forms of discrimination, not only on the ground of sex. In the Third Report (p. 17) the government announces that an information centre on equal treatment will be opened in 2001. The presenters of this shadow report support this endeavour but feel that such a centre should provide advice as well as information on both the content and application of the Women's Convention, and that the centre should also be entrusted with the task of actively promoting the implementation of the Women's Convention within the legal system. A broader basis that includes other forms of discrimination should not be made at the price of the development of expertise concerning women's rights and should not result in delays in the implementation of this plan. The plans for such a centre show that the centre will be located at the Dutch Equal Treatment Commission and that the main Focus of its activities will be on the Dutch equal treatment legislation, not on the Women's Convention as such. This means that most of the activities will concentrate on promoting the legal equal treatment norm between citizens instead of promoting the implementation of the Convention by the Dutch government, both in the legal system and in its social policies. The plans as they are presented in the Third Report are for that reason not in accordance with the recommendation of the Groenman Commission.

*The presenters of this shadow report request that CEDAW should consider urging the Dutch government to set up an independent information and expert centre that is free of government influence. Here, experts in women's rights and the Women's Convention could inform and advise the government and the general public about the obligations and norms contained both in the Women's Convention and in other national and international equal treatment legislation. They would also be able to advise and provide information on how in particular the Women's Convention can and must be implemented within the Dutch legal system and social policy programs.*

### **2.3 The aims of the Women's Convention**

It is encouraging to note that the Groenman Commission's three-part analysis of the aims of the Women's Convention has been included both in the Cabinet's Reaction to the Commission's report and in the Second and Third Reports to CEDAW. The presenters of this shadow report also endorse the value of this analysis. It demonstrates that the UN Women's Convention is a 'layered' instrument: it obliges the adopting of measures at different levels:

1. To implement complete equality both in law and public administration
2. To improve the position of women
3. To combat the dominant gender ideology

The government has actually implemented this analysis by including in the Second and Third Reports an evaluation of the Dutch emancipation policy at each of the three levels. This in turn reveals the kind of progress that has been achieved and shows clearly that in particular the third level has still not been developed effectively in all policy areas. The fact that the government has wanted to demonstrate this through the application of the Groenman Commission's analysis also deserves considerable appreciation.

*The presenters of this shadow report hope that CEDAW will endorse this analysis of the Convention's three-part aims and will also value the reporting of the Dutch situation, as based on this division into three. A specific statement by CEDAW on this point would be greatly appreciated.*

Despite our appreciation of the government's approach, there are also a number of points of criticism to which we particularly want to draw CEDAW's attention.

The aims of the Women's Convention are described in a different way in the Second and Third Reports than in the Groenman Report. The government's description differs especially in terms of the second and third level. Where the Groenman Commission speaks of 'improving women's position', the government turns this into 'promoting diversity' so that both men and women will be free to determine their lives which in turn will benefit society as a whole. The Second Report (p. 5) expresses this as follows: 'to promote diversity as a means of enhancing the quality of society'.

Although we endorse the view that one of the emancipation policy's most important aims is the creating of space for diverse lifestyles and approaches to duties and responsibilities, we nonetheless feel that this liberal interpretation allows the government to partially ignore and to undermine the purpose of the Convention's second sub-aim. The UN Women's Convention emphatically concerns *the improvement of the position of women*. The Women's Convention is a unique instrument of human rights that is directed specifically towards the position of women. The more generalised promoting of 'diversity' (which could also apply to other minorities in society) in turn creates the potential for confusion in terms of whether the position of women still deserves special attention. Yet the government pursues this train of thought with the following: 'The disadvantaged position of women is therefore no longer the central element of this policy.' (The Second Report, p. 8.)

The presenters of this shadow report feel that here the government is thereby deviating from the Convention's aims. Moreover, this draws attention away from the fact that the government is not permitted to implement any measures or policies that actually *weaken* women's position in terms of men. The Second and Third Reports do not at any point explicitly consider the possibility that this may have occurred. This kind of scrutiny should have been applied, for

instance, to the changes that have been introduced to the social security system for widows or to social security rights where mothers with young children are being forced to enter the jobs market. (For further information on these issues, see Chapter 10, paragraph 10.14.)

In the Second and Third Reports, the government has opted for a description of level three that again differs from the one used by the Groenman Report. On this point, the Groenman Commission closely reflects the precise wording of the Preamble and Article 5 (and Article 10) of the Women's Convention. It concerns the modification of the 'social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customs and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women'. The Commission has summarised this as '*the elimination of the dominant gender ideology*'. In its reports to CEDAW, the Dutch government has turned this aim into 'strategy for cultural change'. Once again this creates a generalisation that hides the fact that this concerns the elimination of stereotypes and prejudices that are both dominant and disadvantageous for *women*. Just as the sex-neutral formulation of legislation can conceal the continued existence of *de facto* discrimination against women, so the sex-neutral formulation of the Women's Convention's aims can have a similarly damaging effect: it obscures the unequal power relations between men and women. Although sexual stereotypes create problems for both men and women, unfortunately the stereotypes concerning women and female behaviour are considerably more damaging and limiting than those affecting men and male behaviour. The continued domination of male values means that men have an advantage over women. The elimination of stereotyped thinking demands a cultural transformation, as the Dutch government correctly argues, but it also requires concrete measures particularly to combat the negative stereotyping of women and femininity.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government whether the aims of the Women's Convention have been consciously altered into 'promoting diversity' and 'cultural change'. If so, how does the Dutch government with such 'neutralised aims' intend to safeguard the Women's Convention's explicit vision of improving the position of women and its commitment to eliminating gender stereotyping that is so damaging to women? Does the government recognise the importance of the wording of the Convention's aims in terms of implementing full legal equality, improving women's position and to combat the dominant gender ideology?*

## **Chapter 3 A review of Dutch emancipation policies**

### **3.1 The Dutch emancipation policy: from hard measures to cultural change**

The presenters of this shadow report are concerned in a number of ways about the direction which the Dutch emancipation policy is currently taking. Although it is commendable that the Dutch government recognises the fact that an active policy concerning legal equality and improving women's position cannot be truly effective unless the dominant culture of male and female stereotyping is also changed, it is all too easy to blame the absence of results with respect to obtaining full equality and improving the position of women exclusively on the continued existence of outmoded ideas concerning the relations between the sexes.

Despite the government's assertion in the Second and Third Reports to the contrary, there are still a number of cases where legislation is not in accordance with the principle of equality, for example: pension rights and the law of names, which are discussed in Chapter 10, paragraph

10.11 and Chapter 13, paragraph 13.3 of this shadow report. There are several other instances where there is reason to doubt whether the Dutch government has really fulfilled its commitment to work towards improving the position of women. For instance: when the target figures for political representation have not been achieved, the government has tended to acquiesce in failure rather than sharpen its policy and deploy new instruments. The argument that it is all a matter of *cultural change* can all too easily serve as an excuse not to implement 'hard' measures. Through legislation, the government can establish clear criteria concerning, for example, the representation of women in political or administrative organisations. A supporting policy (in the sense of offering good amenities to the women who assume responsibility for these tasks) can also make this legislation effective. It is obvious that the culture of political and administrative organisations actually needs to change. Although the government has little direct influence on this culture, concrete steps also need to be taken in order to break through the dominant system of male values, criteria and behaviour patterns.

*The presenters of this shadow report request that CEDAW should indicate to the Dutch government that it needs to remain vigilant in its implementation of the Women's Convention and that it must not assume that the first and second sub-aims have no room for further improvement.*

### **3.2 The position of black, migrant and refugee women**

The presenters of this shadow report are of the opinion that a positive aspect of the most recent emancipation policy plans is that creating space for cultural and ethnic diversity is seen as an important goal of the government. However, this is not being fully implemented. In the Dutch emancipation policies there is not enough specific attention to the position of black, migrant or refugee women (BMR-women). Often these women are referred to in the Second and Third Reports as 'aliens' or women. This concept is linguistically referring to 'being an outsider'. It is an exclusionary concept that contradicts the central aims of the Women's Convention and as such should be avoided in the government's emancipation policies.

The Women's Conventions obliges the State Parties to take measures on different levels. Especially on the second and third level (improving the position of women and combating gender stereotypes) the government, should take the position of BMR-women specifically into consideration more than it does at this moment. This means that, besides the general attention to aims like economic independence, specific attention should be given to the way BMR-women are integrated into the Dutch society, to discrimination on the basis of race or ethnic origin and to the way the Dutch immigration policies affects their position. With respect to the participation of these women in political, cultural and societal life, it should be obligatory to strive for an equal representation of women, taking into account their different origin and background. Organisations in the emancipation support structure should be encouraged to integrate the aspect of ethnic and cultural diversity in all aspects of their activities and in their personnel policies.

*The presenters of this shadow report request that CEDAW should indicate to the Dutch government that it needs to promote actively the improvement of the position of black, migrant and refugee women in society.*

### **3.3 The place of unpaid care tasks in the emancipation policy**

There is another worrying aspect concerning the direction which the Dutch emancipation policy is taking. Since the mid-1980s, this policy has focused on promoting women's economic independence by increasing women's participation in employment. Although the Dutch women's movement has always fully supported the value of women's economic independence, right from the start of the government's emancipation policy the movement has also emphasised the fact that the value placed on paid work should not negate the intrinsic value of unpaid care tasks. In the description of the emancipation policy's aim, the word 'autonomy' is explained in an extremely one-sided way as: being able to take care of yourself financially. This shifts the attention away from the fact that, in various phases of their lives, both men and women must depend on others both in terms of earning an income and of actual, physical care.

The assumption that participation in employment is a sign of autonomy is certainly not without its dangers during a period of economic growth when an (educated) workforce is very scarce. This is clearly demonstrated on p. 67 of the Second Report, where the government describes the first aim of the Ministry of Economic Affairs' emancipation policy as follows: 'to make better use of the economic potential of women.' The government promoted this through various means including compelling women on social security to take paid work even if they had young children. On the other hand, it generally left (and still leaves!) the instigation of care provisions such as day care centres and paid leave to the employers and trade unions. This has in turn led to shortages and waiting lists for home care facilities, and has meant that caring for sick or elderly relatives has become increasingly the province of female relatives and friends (family care).

In fact, in terms of the government's economic policy, caring for a family or close friends is viewed as an obstacle preventing participation in paid employment. Therefore, the intrinsic value of providing care becomes subjugated to economic goals. Along with measures that express the intrinsic value of care tasks, there is an equal need for measures that also encourage men to devote themselves more fully to unpaid care tasks.

*The presenters of this shadow report request that CEDAW should question the Dutch government about the content of the concepts of 'independence' and 'autonomy' used in its emancipation policy. Can women gain independence and autonomy solely by becoming part of the (paid) labour force? What about the intrinsic value of (unpaid) care activities?*

### **3.4 The national machinery and the emancipation support policy**

The presenters of this shadow report also have a number of concerns relating to the recent developments of the Dutch emancipation policy in terms of national machinery and the emancipation support policy. Here, the Second Report concludes the relevant chapter (Chapter 2) with: 'By reviewing parts of the national machinery, establishing the new emancipation support policy and ensuring that advice on emancipation issues is included in the new system of advising on mainstream policy, the government has created the conditions to implement the policy so clearly enunciated in Beijing during the Fourth UN World Conference on Women in Beijing, namely that greater emphasis should be placed on implementing policy and generating support for it'.

The presenters of this shadow report observe that, in terms of the implementation of the Women's Convention, the government hereby limits the role of the national machinery to the ensuring of the policy's implementation and the generation of support for it. As previously

stated we feel that the Dutch emancipation policy is stagnating. From that point of view it would be all the more obvious if the government had indicated the ways in which the national machinery supports it in observing social developments, advises it on the expected results of the planned policy on women's position and monitors the implemented measures in terms of their effectiveness.

In the Third Report (Chapter 2) the government indicates that a State Secretary on Social Affairs who is also responsible for emancipation policy is currently in office and that a Department for the Co-ordination of Emancipation Policy exists. Besides this it does not mention the functioning of a national machinery at all. The only other institution that in our view can qualify as part of a national machinery at this moment is the Temporary Expertise Committee on Emancipation in the New Advisory System (TECENA). This Committee is studying the organizational aspects of the ministries' goals and the way mainstreaming is organized within the various ministries. The government fails to mention the fact that this Committee will have to terminate its activities by the end of 2000, whatever the results of the evaluation will be. At that moment the government will no longer have a high level independent advisory board at its disposal, as General Recommendation 6 requires.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government to clearly indicate the role played by a national machinery (in the sense of General Recommendation 6) in the implementation of the Women's Convention.*

In terms of the emancipation support structure, the presenters of this shadow report have noted that over the last five years there have been a number of radical changes in the way in which NGOs are supported in the field of women's emancipation in the Netherlands. The emphasis is now on national co-ordination and support as is demonstrated by the funding of large-scale projects such as E-QUALITY, Top Link and Opportunity in Business. These organisations are professional expert institutes, all installed by the government. Many grass-roots organisations have had to put up with the fact that they are only supported on the basis of having to apply for separate subsidies for each new project. The expert institutes mentioned above do not have the explicit assignment to support grass-root organisations financially or otherwise.

The figures in the Third Report (p. 20) about the amount of money that the government spends on the above mentioned national organisations illustrate this point very clearly. From the approximately 13 million guilders available for the emancipation support structure in 2000, 10.7 million goes to these institutes, leaving a meagre 2.3 million for all the grass-roots organisations to share among each other.

Without wishing to detract from the importance of the national organisations mentioned above, the shadow report's presenters point out that this policy seriously threatens the continued existence of various women's organisations that operate both regionally and nationally. Having to apply for subsidies for each new project places an enormous burden on the limited manpower of these voluntary organisations and endangers the continuity of their activities. This, combined with the relatively small amount of money that is available for their activities, makes it very hard for these groups to survive. Fewer and fewer women will be able to go on with these activities, which also means that they will no longer be able to be involved in the mainstreaming process. By maintaining its policy to mainly support professional expert institutes that operate on a national level the government neglects real innovative initiatives

`at ground level'. With that it runs the risk that the emancipation process will stagnate even further.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government how it intends to promote the continuity of the women's grass roots organisations while deploying a policy of granting short-term project subsidies.*

The government announces that in 2000 the effectiveness of the emancipation support policy will be evaluated. There is no mentioning of the criteria that will be applied to judge whether existing policies have been successful or not, whether any involvement of the women's movement in this evaluation process is foreseen and how the results will be communicated with the women's movement. There is also no mentioning of the question whether in this evaluation the effectiveness of the existing structure with respect to the improvement of the position of black, migrant and refugee women will be dealt with.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government about if and how the women's movement will be involved in the evaluation of the emancipation support structure, mentioned in the Third Report.*

### **3.5 Mainstreaming**

In the Third Report the government explicitly mentions mainstreaming as the second part of the double edged strategy of its emancipation policy: the integration of emancipation in the mainstream of its general policies. The presenters of this shadow report feel that the activities undertaken by the Emancipation Policy Co-ordination Department that are mentioned in this paragraph of the Third Report are very meagre. It (again) all comes down to announcing more research and writing guidebooks, both in the field of the mainstreaming process itself and in the field of Gender Impact Assessments (GIA). No concrete measures are taken to implement these two instruments effectively on the basis of the studies that have already been carried out. Issuing guidelines on mainstreaming will not do the trick, it is necessary to offer training programs in which administrators learn how to implement a gender impact assessment. Besides, it is unlikely that the this instrument will ever be applied (even in a simplified form, as the government is now considering) when it is not compulsory for the administration to carry out this test, unless it is compulsory for the administration to carry out this test, as it is in the case of the Business Effect Test.

Neither specific targets nor evaluation procedures of the (un)successfulness of the mainstreaming process are mentioned in this chapter. Only with respect to the Interdepartmental Plan of Action on Gendermainstreaming (Third Report, p. 13) is there mention of an evaluation of this project as far as the organisational aspects are concerned. It looks as if this plan is not going to be evaluated at all as far as the substantial results are concerned. Another defect in this part of the Third Report is the fact that nowhere in the paragraph on mainstreaming is the involvement of the women's movement is mentioned. We presume that this means that the government does not in any way take the experiences and knowledge of the women's movement into consideration when implementing its mainstreaming policy.

*The presenters of the shadow report request that CEDAW should consider asking the Dutch government to list the techniques and methods it deploys so as to ensure the implementation of mainstreaming? and monitor the mainstreaming of the emancipation policy and to explain*

*in what way the effects of mainstreaming policies are evaluated. In what way does the government guarantee that the women's movement has an input in the process of mainstreaming gender issues?*

## **Part II A discussion of the articles of the Convention**

### **Chapter 4 Some preceding remarks on missing articles**

Only Convention articles that require commentary are discussed in this part of the shadow report. The presenters of this shadow report have imposed the limitation of only mentioning the points that they view as being the most urgent or which present the most flagrant violations of the Convention.

Before discussing the Second and Third Reports as far as they deal with the implementation of various articles of the Women's Convention the presenters of this shadow report would like to draw CEDAW's attention to the fact that the Dutch government in these two Reports fails to present any material about the implementation of the article 2 of the Convention. Article 2 contains the obligation of States to ban all forms of discrimination against women and mentions the ways in which this should be dealt with. Neither in the Second nor in the Third Report is there any mention of the measures that are taken in this respect. The government also fails to report on the effectiveness of the legal instruments that so far have been developed to combat discrimination against women. Recently (Spring 2000) two reports on the functioning of the Dutch General Equal Treatment Act and the Equal Treatment Commission (the main instrument in this respect) have been published. Independent researchers and the Commission itself have pointed out a number of serious shortcomings and have brought forward many recommendations. Besides the General Equal Treatment Act and a specific Equal Treatment Act for the labour market, there are also criminal sanctions in the Dutch legal system. As far as we know no evaluation of these sanctions has taken place since they have been enacted.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government to report extensively on the results considering article 2 of the Convention.*

In addition the presenters of this shadow report want to remark that a discussion of article 4 (in relation to General Recommendation 5 of CEDAW) is also completely missing in the Second and Third Reports. We will discuss this subject further in this shadow report in relation to education (Chapter 9) and in relation to the labour market participation of women (Chapter 10). In general the idea that positive action might still be necessary (as CEDAW stresses in its General Recommendation 5) is clearly non-existent in Dutch emancipation policy today.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government to express its opinion on the subject of positive action and to describe what its policies concerning the instrument of positive action are.*

### **Chapter 5 Articles 1 and 3: Non-Discrimination and Human rights and fundamental freedoms**

#### **5.1 General remarks**

The presenters of this shadow report agree with the view of the Dutch government that violence against women should, *on a conceptual level*, be considered as a form of discrimination against women. As such we are happy that in the Third Report the government chooses to present its results in this field under the heading of Article 1 of the Convention. We assume that this change of opinion means that the government will also accept the view that sexual harassment is a form of discrimination of women (a view that until now has explicitly been rejected) and that it is prepared to implement the new Directive by the European Union on this subject as soon as it will be adopted.

However we are also critical about this new approach to deal with violence as a form of discrimination instead as part of the human rights policy of the government. In the First and Second Reports the government discussed the subject of violence under article 3. As a consequence of the approach chosen by the government in the Third Report to deal with violence of women under the heading of article 1, discussion of article 3 disappears altogether from this Report. The government falsely assumes that the subject matter of article 3 of the Convention applies to gender-related violence only. In our opinion the objective of article 3 is much broader. It sets out the obligation take all appropriate measures, including legislation and temporary special measures, in order that women can enjoy all their human rights and fundamental freedoms. This means that a more general approach towards the human rights of women is necessary. The narrow approach by the government is also reflected in the Multi-year Emancipation Policy Document (Third Report, p. 9), in which it appears that women's human rights are conceptualised solely as the right not to be discriminated and to be protected from (sexual) violence. Other subjects, like the reproductive rights or the right to full political participation are not discussed in this document.

In addition to this the presenters of this shadow report would like to draw CEDAW's attention to the fact that in the presentation of the state of affairs concerning the subject of violence against women, the government, especially in the Third Report, narrows this subject down to domestic violence and sexual harassment. The Report does not contain any figures about sexual violence in the 'public' sphere (rape, sexual attacks, etc.) and within family-relations (incest), in relations of dependence (e.g. doctor/patient) or within institutions (psychiatric hospitals or institutions for mentally disabled). Nor does it offer insight on the question of how the government deals with this kind of violence and if and how it works at improving the safety of women in these areas. Moreover, the concept of domestic violence is presented in a gender neutral fashion, thereby denying the fact that with respect to domestic violence it is women and children who suffer most. The same goes for stalking, which is also presented as a sex neutral offence.

*The presenters of this shadow report invite CEDAW to ask the Dutch government to develop a more extensive approach concerning the human rights of women and to ask for a more extensive report on article 3 in the future.*

*The presenters of this shadow report also invite CEDAW to consider asking the Dutch government about its policies to combat sexual violence against women and specifically to request statistical material about the offences of rape, sexual assault, incest and sexual abuse, as well as reports about the way the judiciary deals with these offences.*

## **5.2 Article 1 of the Convention**

In discussing Article 1 of the Convention in Chapter 3 of the Third Report the government should, in our opinion, also have given its view on the content and scope of the principle of non-discrimination in the Women's Convention. As the government already has endorsed the analysis of the Groenman Commission on this point it could not have been too difficult to make clear that the concept of discrimination is not limited to direct discrimination but also encompasses indirect discrimination and that the non-discrimination principle is also applicable in private horizontal relationships. It then B under article 2 B should have evaluated in how far its own legal measures (in civil, administrative and criminal laws) are sufficient and effective in applying this principle in practice.

By only mentioning violence against women as a form of discrimination against women in this Chapter of the Third Report the government gives the wrong impression that other forms of discrimination of women do not exist in the Netherlands. We are very strongly opposed to this false image. To give just two examples: (1) according to the Dutch Equal Treatment Commission many women in the workplace suffer from direct discrimination when they are pregnant; (2) the results of a recent survey on equal pay shows that (after 25 years of equal pay legislation) women still suffer from pay-discrimination. (This subject will be dealt with in Chapter 10 of this shadow report.)

*The presenters of this shadow report invite CEDAW to ask the Dutch government whether it still considers direct and indirect discrimination of women as a serious problem in society, especially in the field of labour relations and pay.*

### **5.3 Violence against women**

In discussing the subject of violence against women in Chapter 3 of the Third Report the government does not in any way refer to General Recommendation 19 or the UN Declaration on the Elimination of Violence Against Women, nor does it announce measures to translate and publish these documents. In general the presenters of this shadow report are very disappointed that in the Third Report very little is to be found about how the 108 recommendations that followed from the Report on Violence against Women will be implemented by the government. In this Report it is stated that an integral approach to violence against women is absolutely necessary. In the Third Report such an integral approach is missing. Violence against women is only dealt with in Chapter 3, the Report does not discuss this subjects in the other chapters (e.g. the relation between violence and economic dependency is not discussed in Chapters 6 and 8). Also sexual violence is often seen as a gender neutral offence (as in the case of domestic violence or stalking; see below).

Again the government shows that it is not able to transfer conclusions and recommendations of its own research programs into an integral and adequate approach to the subject of violence against women. Policy plans are just repeating former 'plans of action' instead of launching a new 'task force' with concrete and measurable projects with adequate financial resources. Good practices at local level should be implemented at a national scale.

*The presenters of this shadow report invite CEDAW to ask the Dutch government to indicate in a more precise way what its concrete plan of action considering violence against women is and how it is going to measure the results of this plan of action.*

### **5.4 The law against stalking**

The new criminal law against stalking is presented in the Third Report as an important instrument to combat this kind of violence against women, besides the existing instruments in private law. In many cases of homicide of women the victim had first been stalked over a period of time. Although there is consensus about the necessity to protect women in a more effective way the criminal law against stalking is greeted with a lot of skepticism by many feminist lawyers in the Netherlands.

A first point of criticism is that the Public Prosecutor can only bring a case of stalking before the judge if the victim has issued an official complaint. Although the criminal law approach in some cases might be a welcome extension of the legal instruments against this kind of violence, it is generally seen as a too narrow approach to effectively protect women from stalkers. The danger exists that the government (after having adopted this law) will not do anything else to offer adequate protection. This suspicion is confirmed when reading the Third Report. There are no concrete measures mentioned that could support the criminal law approach, like issuing guidelines to the Criminal Public Prosecutors about how to implement this law or giving instructions to the police about the implementation of this law. There have already been cases of women being sent away when bringing a case of stalking to the attention of the police. Another subject not covered in the Third Report is an evaluation of the AWARE project, which has been held in the Rotterdam area in the last years. This project aims to effectively protect women against a stalker by giving her a device to send a direct alarm to the police station when the stalker shows up in her environment. Studies by independent researchers have shown that the criminal law approach can seriously damage the safety of women through the AWARE approach. What will become of this project in Rotterdam and are there any plans to implement AWARE in the whole country?

*The presenters of this shadow report request CEDAW to consider asking the Dutch government about how it intends to implement the law against stalking in such a way that women will effectively be protected against this kind of violence and whether the government intends to implement AWARE in the whole country.*

## **5.5 Domestic violence**

The Third Report in particular contains a lot of material on the subject of domestic violence. The plan of action with respect to domestic violence lies in the hands of the Ministry of Justice. The Report on Violence has pointed out clearly that this means that a very one-sided criminal law approach to this problem is followed. On this subject the Report on Violence also concludes that there is a lack of coherency and that there are often contradictory goals. On the issue of battering of women this Report even talks of the 'marginalisation' of this problem. The measures against domestic violence that are presented in the Third Report are in fact very often local initiatives, which were and are badly supported by the government, and of which the government does not in any way indicate how they will be developed on a national scale. Neither the Second nor the Third Report present statistical data about the battering of women and the actual need for shelters for battered women and their children or on the possibilities to offer the offenders alternative housing (in order that the woman and her child(ren) do not need to move house). The Reports do not indicate whether the existing network of shelters are sufficient to cover this need. Nor do both Reports describe the (bad financial!) situation of the existing shelters.

After having found a shelter (which is by no means easy) or a temporary place to stay, a battered woman often finds it very hard to find new permanent housing. Although there are

effective legal means to force the offender (man) to leave the house instead of the battered woman, many women find it hard to use these legal instruments or find it unsafe to stay in the house where they have been assaulted in the past. Women who have had to leave their homes because of violence against them should be given priority to new housing.

In general the conclusion of the Report on Violence and of the presenters of this shadow report is that the measures to combat violence against women are insufficient and that studies and recommendations are applied too slowly in practice. The following may serve as an example of the slow progress that is being made. In 1993 a working group within the Public Prosecutors Office has drawn up a number of recommendations to improve the situation with respect to the question how to deal with battering of women. This working group stressed the necessity of special training programs for police officers and Public Prosecutors on the subject of violence against women, the necessary co-operation between police and social workers and the necessity of some legal reforms so that offenders could be imprisoned even when they were not 'caught red-handed'. The report of this working group has disappeared into a drawer at the Ministry of Justice. After seven years none of these recommendations has been carried out! The lack of professional training is also one of the problems signalled in the Report on Violence.

The government should invest in the extension of local projects and approaches that have proven to be successful, like for instance the systematic approach followed in cities like Haarlem and Apeldoorn, in which both victims and offenders received effective help from a team of experts.

*The presenters of this shadow report request CEDAW to ask the Dutch government to present statistical data about battering of women and about the number of places available in existing shelters in the Netherlands and to urge the Dutch government to implement the recommendations made by various working groups on the subject of domestic violence in the past and to follow up on the recommendations made in the Report on Violence against Women with the utmost possible speed. Also we request CEDAW to urge the government to extend successful local projects to the rest of the country.*

## **5.6 The Working Conditions Act and sexual harassment**

The inclusion of sexual harassment in the Working Conditions Act in 1994 is a very important step forward. It means that the Netherlands is deploying a policy where sexual harassment is being opposed not so much as a form of the unequal treatment of women, but as a bad working condition that must be abolished like all other bad or unsafe conditions. Preceding the government's evaluation of this act in 1999, the Clara Wichmann Institute collaborated with the University of Leiden on researching how the case law covering the area of sexual harassment has developed over the last 15 years. One of the most important conclusions of this research is that although judges are more than ever prepared to recognise sexual harassment as an objective transgression of standards for which the perpetrator must be punished and for which employers are B it is still principally the female victims of sexual harassment who must suffer the consequences and, as a result, often end up losing their jobs. One of the causes of this is that small businesses in particular do not have complaints systems, mediators or complaints committees. Unlike the civil service and educational or health care organisations, in the Netherlands private companies are not obliged by law to provide these facilities.

The paragraph on sexual harassment in the workplace in the Third Report under the heading 'cultural change' contains misleading information by the government on the outcome of the evaluation of the Working Conditions Act; most of the figures that are presented at that place do not refer to the attitude towards preventing and fighting against sexual harassment but, instead, refer to the attitude of employers to the general obligations under this law. E.g. to conform to the obligation to provide information on working conditions does not automatically mean that employers provide information on sexual harassment! The figures that directly relate to sexual harassment do show some progress concerning policies that are developed at company level. But they do not indicate that no further government action to improve the situation is necessary. On the contrary: on the basis of the evaluation report there is no proof that in practice sexual harassment does occur less often than before. In 1999 an average of 38% of all companies have still not taken any measurements to combat sexual harassment whatsoever. Moreover, the sectors in which these measures are taken are mainly those in which some kind of policies (like complaint procedures) are already compulsory (health care, education, etc.); sectors like agriculture, trade, transport, industry and commercial services, have taken less precautions.

From this perspective it is disappointing that the government in the Third Report (p. 26) states that the law 'does not spell out what measures they have to take, but encourages them to devise strategies appropriate to the conditions of their particular workplace.' It is obvious from the results of the 1999 evaluation that such an encouragement is not enough. The Report on Violence against women is very clear on this subject and concludes that this omission is a breach of the States obligation under the Women's Convention (especially General Recommendation 19, article 24 sub i) to provide effective complaints procedures and remedies, including compensation.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government whether, based on the results of the case law research and the government's own evaluation research, further legislation will be considered in order to implement the statutory introduction of complaints systems in the private sector with respect to sexual harassment in the workplace.*

### **5.7 Sexual harassment in schools and in the medical world**

The subject of sexual violence at schools is very briefly dealt with in the Third Report (p. 26). The government fails to discuss the results and recommendations of the Report on Violence against women on this subject. Although in both sectors there are compulsory complaint procedures, the Report on Violence shows several shortcomings in terms of the availability of data on this subject and in the effective protection of pupils and patients, which are summarised in the annex to the Third Report. The government does not indicate how it is going to respond to these recommendations.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government whether, based on the results of the Report on Violence, it will consider gathering more data on the subject of sexual harassment in schools and in the medical world and will consider implementing the recommendations in this Report with respect to the improvement of the functioning of the existing complaint procedures.*

### **5.8 The protection of victims of sex offences**

The measure, presented by the government in the Third Report, that victims of sex offences (Third Report, p. 25) can be exempted from the duty to testify in a criminal court procedure is in practice very seldom applied. Victims are not informed by the Public Prosecutor of this possibility, nor do Public Prosecutors inquire after the physical and mental condition of the victims in order to judge whether they are able to testify in court or not.

*The presenters of this shadow report request CEDAW to invite the Dutch government to present material about the effects of the measure that victims of sex offences can be exempted from the obligation to testify in a criminal court procedure.*

Although in the Third Report (p. 32) the government gives the impression that it is very active in the field of the police and public prosecution services in sex cases, it should not be forgotten that, as recently as the beginning of the 1990s as a result of cuts in the budgets of police departments specialised 'youth and vice' units were abolished. The 'improvements' presented in the Third Report became necessary as a result of those reorganisations. In practice victims (and their legal advisors) do not see many results from the recent changes in approach by the Public Prosecutors Office that the government describes in the Third Report. In their experience neither the Public Prosecutors Office nor the criminal procedure is sufficiently capable of dealing with the perspective and the needs of victims of sexual violence. Victims are often badly informed about how their case is developing. A 'talk' with the victim is not used by the Public Prosecutor to ask the victim about her opinions on the case but to tell her how he sees the possibilities of bringing the case to court. Although there are specialised police officers and Public Prosecutors, victims are often not informed about their existence. The government announces that there will be a helpdesk (Third Report, p. 35.) This is a good initiative, provided the victim can get access through this facility to somebody who is really acquainted with her case. This project is evaluated positively, and the government plans to apply this approach in the rest of the country. It is not clear what the government is planning to do with the results of the evaluation of the 'Criminal Compensation Fund Act' that is also mentioned in the Third Report (at p. 34).

In 1997 the government published a 'Vice Almanac' which contained a lot of useful information for the police and the public prosecutors. This booklet has proven to be very useful but urgently needs an update.

Victims of sex offences and victims of domestic violence should have the opportunity to get legal advice for free. Like suspects they should automatically get access to a lawyer from the very first moment they get into touch with the judiciary system. In the Netherlands at this moment there are two pilots concerning free legal assistance to victims of sexual and domestic violence (Alkmaar and Rotterdam). The experiments are very successful and should be extended to the rest of the country.

All in all the approach of victims to sexual violence is 'scattered' and inadequate, according to victims and their lawyers.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government about the way in which it intends to deal with the complaints mentioned in this shadow report about the weak position of victims of sexual violence within the criminal law system and court procedures. Also we request CEDAW to ask the government to evaluate the experiments in which victims of sex offences and domestic violence get free legal assistance and whether it intends to extend this project to the rest of the country.*

## **Chapter 6 Article 6: Trafficking in women and prostitution**

### **6.1 Trafficking in women**

The Dutch government pursues an active policy to combat trafficking in women and recognises the fact that this criminal activity can only be effectively opposed by agreements made at an international level. As a result of various factors including the conference in The Hague (the Second Report, p. 34), a number of important measures have been taken to effectively combat this form of female exploitation. This includes the introduction of a National Monitor for Trafficking in Women, the installation of a National Rapporteur on Trafficking in human beings (in general) and the abolition of the ban on brothels (see below) making it possible to include sex workers in the protection provided by existing labour and civil law. However, non EU-migrants are excluded from this new protection. Moreover, this legislation on trafficking in women is restricted to trafficking in women for the purpose of prostitution and does not cover other contemporary forms of forced labour, slavery like practices and servitude, such as the trade in maids and the trade in women for the commercial marriage market.

Under-age, single asylum seekers are a particularly vulnerable group: they enter the Netherlands on the pretext of requesting asylum and then disappear into prostitution shortly after registering at a refugee centre. In practice, the Dutch Immigration and Naturalisation Service and the Ministry of Justice appear unable to effectively protect these young girls against this form of trafficking in women.

The Foundation against Trafficking in Women has spotted various problems in the implementation of the existing legislation and policy measures against trafficking in women. To some extent, these problems relate to the inadequate monitoring of trafficking in women and to the fact that legal and other organisations are insufficiently informed about the special protective measures intended for women who wish to report their cases. This means that these women regularly and unjustly end up in virtually hopeless asylum procedures where the evidence that they are the victims of trafficking in women is either ignored or not recognised so that they are denied the special protection that they are entitled to by right. Often the Foundation receives complaints that victims are not enabled to report their cases or are not kept sufficiently informed by the judicial authorities about how the criminal proceedings are progressing. Another problem is the fact that although these women are granted temporary residence permits during the (sometimes lengthy) criminal proceedings against the perpetrators, little is provided by way of additional help or assistance to build a new future. It is virtually impossible to find accommodation outside of a women's shelter and these women are not granted a work permit. They also have no access to language courses or other form of education and training.

Finally, the presenters of this shadow report would like to point out that although temporary residence permits are issued to victims to cover the period in which the perpetrators are prosecuted, once these permits expire it is only in exceptional cases that these women are allowed to remain in the Netherlands on humanitarian grounds. This is despite the fact that, back in their country of origin, they fear social ostracization, criminal prosecution and/or fresh confrontation with the criminal network that originally forced them into prostitution.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government about the way in which it intends to deal with the complaints mentioned above in*

*terms of the lack of information provided to the victims of trafficking in women. This should cover the course of the criminal procedure and the way in which these women can spend their (temporary) residence in the Netherlands during the criminal case. Can the Dutch government indicate whether it is considering extending the present policy to combat trafficking in women so that it will also cover the victims of other contemporary forms of trafficking in women? When the victims of trafficking in women report their cases and appear as witnesses in the perpetrators' prosecution, is the Dutch government prepared to effectively protect these victims against being sent back to their country of origin?*

## **6.2 Marriages of convenience**

The Dutch government (out of fear that through marriage people will 'sneak' into the country) presupposes that the law against marriages of convenience will prevent people from marrying in order to get a permit for residence. The evaluation mentioned in the Third Report (p. 42) in fact does contain some figures and shows that such marriages were only prevented in a relatively small number of; half of the negative decisions made by the Public Prosecutor subsequently were nullified by a judge, so the couples could marry after all. Another argument in favour of this law used by the government is that in this way trafficking in women will be prevented. This effect is also very dubious. Marriage is a very complicated and expensive way to bring these women into the country. On the other hand this law (even in its mitigated form) has severely negative consequences for women of non-Dutch origin in terms of stereotyping them all as potential victims of men who only want to marry them in order to get a residence permit or as potential victims of trafficking in women. The law also has negative consequences for women in terms of subjecting them to interrogation by often unfriendly and suspicious police officers who question them about their personal life. It appears that relationships between Dutch women and non-Dutch (non-white) men are more quickly suspected of being a marriage of convenience than the relationships of Dutch men with non-Dutch women. In a very stereotyped way women's stories about the nature of their relationship are believed less easily than those of men. In its evaluation the government refuses to examine the possible (indirectly) discriminatory aspects of this law. The fact that this law in the near future will also apply to people who want to register as an unmarried couple (Third Report, p. 42) is a typical example of 'levelling down': equally badly off is also equal treatment!

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government to re-evaluate the law against marriages of convenience in terms of a balancing of the possible positive and negative effect of this law.*

## **6.3 The abolition of the ban on brothels**

The abolition of the ban on brothels represents (in theory) an important step forward in the improvement of the position of prostitutes. As a result of the abolition of the ban on brothels city councils get the authority to regulate and inspect sex businesses through a licensing system. The licensing system enables city councils to combat prostitution under forced or exploitative conditions and/or by minors and to set minimum standards for sex businesses regarding working conditions, safety and health. The Dutch government correctly presented this in the Second Report (p. 29) as improving the position of women, but in the Third Report does not mention this goal as one of the one of six official goals of this legislation. The primary goal now mentioned (and also to be found in the Bill presented to Parliament) is 'to control and regulate the employment of sex workers by various means, including the

introduction of a municipal license system'. (Third Report, p. 43.) The fourth goal now mentioned is 'to protect sex workers', which really is something quite different than the improvement of their legal and social position. In the paragraph 'Towards diversity' (Third Report, p. 46) the government again speaks of the improvement of the position of prostitutes and bluntly states that '(D)decriminalizing brothels is an important step towards improving the social position of sex workers. It will give them greater independence and enable them to demand decent working conditions. In addition, local authorities will be able to play a supportive role, ensuring that sex workers receive the same treatment as any other person in employment, for instance by informing them and their employers about their respective rights and obligations'. In theory the government is absolutely right; in practice it takes a lot of effort to bring about these positive effects. We explicitly want to bring to CEDAW's attention that the Third Report lacks any concrete measures to improve the position of prostitutes in practice.

A particularly important aspect of the abolition of the ban on brothels is that it opens the way to include prostitutes in the legal protection provided by labour laws (especially the Labour Conditions Act is important in this respect). Coercion and exploitative or abusive working conditions in prostitution can be tackled through emancipating prostitutes, improving their social and legal position and by applying the standard legislation and regulations covering employment and other types of working relations (including social security legislation). However, this presupposes that the government implements an active policy in that respect. The government should actively support the emancipation of prostitutes by giving them information about their rights, offering training programs to public officers and city councils and the institutions responsible for the implementation and supervision of labour law about the way the new law should be applied, etc. Such an integral approach is missing in the Third Report. The subject is only dealt with in relation to violence (trafficking), not in relation to the economic dependence, poor labour conditions, abuse of power in labour relations, health care problems or lack of social security for prostitutes. In the Chapters of the Report dealing with these subjects prostitutes are not mentioned at all. 'De Rode Draad', a prostitutes' rights organisation, can play an important role in this process and must receive financial backing from the government for this work. This organisation could also have played an important role in the development of the booklet with tips and advice on formulating, implementing and enforcing local policy (Third report, p. 47), but was in fact not involved in that project. It is very unfortunate that this organisation depends on temporary subsidies and is constantly threatened with closure. With respect to the third objective of the Convention (to combat gender stereotyping) no effective measures are mentioned in the Third Report to tackle existing negative stereotypes and marginalisation of women who work in the sex industry. This notwithstanding the generally acknowledged fact that the existing stigma on prostitution acts as a powerful barrier to prostitutes organising to defend their rights and to participate in the broader community.

In general the presenters of this shadow report stress the fact that the abolition of the ban on brothels apparently is primarily used by the government not to improve the position of prostitutes, but as a new instrument to regulate the sex industry from a public order perspective, including the regulation of illegal immigration.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government about which measures it intends to take to support and further the emancipation of prostitutes, to improve their legal protection vis-à-vis brothel keepers and to effectively implement national and international labour law standards in the sex industry.*

## **6.4 The position of non-EU migrants in the sex industry**

Along with the abolition on the ban on brothels, it has been made virtually impossible for non-EU migrants to work legally in the sex industry in the Netherlands, although it is estimated that more than half of the prostitutes working in the Netherlands come from a non-EU-country. To this aim a special prohibition is incorporated in the Law on Migrant Workers (WAV) and the draft Aliens Act, which prohibits the issue of employment, residence and work permits (including work as an independent contractor/ self employed worker) for work in the sex industry. Prostitution is the only kind of work for which it is categorically and legally impossible to acquire a work permit in the Netherlands. This means that women of non-EU origin who work in prostitution will be pushed still further into illegality which will in turn make them more vulnerable to coercion and exploitation. Hence, the very group that so desperately needs legal protection will be excluded from it. These rules also hinder the effective prevention of trafficking in women. In neither the Second nor the Third Report does the government mention these rules or what it intends to do in order to prevent the negative consequences they have for non-European women who work in the sex industry.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government how it will avoid forcing non-EU migrant prostitutes into further illegality because they cannot acquire an employment permit for these activities and how the government justifies the fact that the most vulnerable (to trafficking and other forms of violence and abuse) group is excluded from the possibility of working on a legal basis and thus benefit from the new protections that the abolition on the ban of brothels might offer to Dutch sex workers?*

## **6.5 Stigmatising prostitutes through identification legislation**

Not mentioned in the Third Report, but nevertheless very important in this respect, is a very recent law in which municipal officials who are appointed to supervise municipal regulations concerning prostitution get the authority to ask prostitutes to show them their identity card and immigration papers, not only when these women are found working in a brothel, but also walking in the streets. Instead of decriminalising prostitution and regulating the sex industry (which officially are the aims of the abolition of the ban on brothels) this law clearly aims to regulate illegal immigration of women. This measure stigmatises all women who 'look foreign' or 'dress defiantly', even when not actually being at work in a brothel as a prostitute but also when walking in the streets. There is no general duty to show an identity card or immigration papers in the Netherlands; in only a very limited number of cases can a person be asked for these papers. The law which obliges women who are 'suspect of prostitution' to prove their identity and show the immigration papers, in our view, is in breach of the fundamental human right to privacy. As such it also is in breach of Article 3 of the Women's Convention.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government how it evaluates the law in which municipal officials get the authority to ask prostitutes for their identification papers in the light of article 3 of the Women's Convention.*

## **Chapter 7 Article 7: Political and public life**

### **7.1 The under-representation of women in politics and government**

The figures reflecting the development of the participation of women in political and public life show that, apart from the number of female State Secretaries, there has been no real progress since 1994. (Second Report, p. 41, table 5.2; third Report p. 50.) In some areas there is even evidence of a decrease in women's political participation. The government does not publish figures covering women in large social organisations such as associations for employers or employees. When target figures have been set, these have not been achieved. A target figure for women for 2002 of 25% of all mayors and royal commissioners is remarkably low. Although various measures are mentioned to increase political participation, these seem to have had little effect. In its report, the Groenman Commission indicates a lack of co-ordination on this point. The Commission argues that here the government should fulfil a stimulating, facilitating and exemplary role, and can only do that on the basis of a central, co-ordinating function.

The measures described in the Second and Third Reports chiefly consist of introducing target figures and stimulating information campaigns and not of solving the causes behind this limited participation. The policy strongly emphasises the influx and selection procedures, and not the causes behind the efflux of women. One of the causes may be that female political representatives cannot benefit from regulations covering maternity and parental leave, and that it is not possible to replace them during the period in question. This means that women who want to have a family may hesitate about making themselves available for these posts, and political parties may also hesitate about nominating women of child-bearing years for these posts.

Although there are various analyses of the reasons why women tend to leave politics (the revolving door problem), up till now the government has failed to develop the instruments needed to tackle this area.

The fact that many women leave politics is only one of the problems. Another problem is that often there are enough qualified female candidates for political or (higher) administrative posts, but that in the end women are not appointed. Despite the low figures and the fact that targets are not met the government does not announce more 'severe' measures, like the use of the instrument of setting quota. According to article 4 of the Convention, read in connection with General Recommendation 5 of CEDAW, the government cannot just sit back and has to fulfil its duty to actually ensure that there is an increase in the proportion of women in politics and government.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government how it intends not only to increase the influx of women into politics and government but also to prevent women from leaving these posts. Is the government considering more effective forms of positive action (compared to simply setting targets) in order to increase the number of women in political or administrative posts?*

## **7.2 Towards a qualitative approach**

Another, more *qualitative* approach, would be to renew the way in which political decision making is taking place. This first of all could be done by the mainstreaming of gender issues in 'general' political issues, in such a way that women see that these issues are really about their lives and their future. Another qualitative approach would be a renewal of politics in the way it 'operates'. Not only decentralising political decision-making but also radical changes in political organisations might be helpful in order to get more women involved in politics.

Some of the most recent trends are the use of (interactive) forms of modern communication technologies, the introduction of so-called deliberative democracy, using 'juries' to decide on public and political issues, etc. These developments offer new opportunities to women. However, it still remains to be seen in what way women will really be able to grasp these opportunities, given the factual differences of position and power between men and women. A description of these developments as well as an assessment of how to react to them in such a way that women will gain from them is not present in the Second and Third Reports. The presenters of this shadow report feel that the government is not keeping up with these developments, let alone that it is pro-active in this field.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government how it intends to develop a more qualitative approach to the problem of under representation of women in public and political life, taking into consideration modern technological and organisational developments.*

### **7.3 Discrimination by political parties**

It is remarkable that in both the Second and Third Reports' discussion of Article 12 of the Women's Convention, the government does not mention the fact that there is still a political party in the Netherlands that explicitly excludes women from its membership: the *Staatkundig Gereformeerde Partij* (SGP). Women who have wanted to join this party have tried in vain to achieve this through actions brought before the courts. In this procedure the judge did not evaluate whether article 7 of the Women's Convention was applicable. This form of discrimination is not forbidden under the General Equal Treatment Act (the Groenman Report, p. 86). Up till now the Dutch government has refused to apply the General Equal Treatment Act and/or to take measures against this party, and argues that it is not compelled to do so under the Women's Convention (the Cabinet's Reaction, p. 26). The Groenman Commission feels that this situation is contrary to Article 7 of the Women's Convention.

*Legal clarity on this point would be increased by an explicit judgement by CEDAW on the question to what extent the government is compelled by Article 7 to take measures against a political party that directly discriminates against women.*

## **Chapter 8 Article 9: Nationality rights and aliens laws**

### **8.1 General comment**

The presenters of this shadow report have observed that, particularly in terms of the policies towards minority groups, immigration rights and refugees' rights, women encounter a great many legal and practical difficulties that, in our view, constitute actual violations of article 9 of the Women's Convention, and in many cases also other articles like articles 11, 12 and 13. This material is so complex and in such a state of flux that providing the complete picture is simply beyond the scope of this shadow report. However, we do feel that the government and the relevant ministries and administrators are also lacking this information. Without that information the government is unable to fulfil the requirement, set by CEDAW in its 6th General Recommendation, that obliges governments to establish high level institutions that can advise on the impact on women of all government policies. Such an advisory board does not exist concerning the position of immigrant and refugee women. Therefore, following the research covering health, motherhood and employment, and violence against women, we recommend that a national report into the implementation of the relevant criteria of the

Women's Convention should be rapidly drawn up by a team of independent experts. This team should evaluate in depth whether the Dutch immigration policies and alien laws are in conformity with the Convention.

It is important to note that both in the Second and in the Third Report the government does not discuss the third level of scrutiny: the question whether national laws, policies and practices do reflect dominant gender stereotypes that are detrimental to the rights of women. This test should therefore attract a great deal of attention in the aforementioned national report.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government to research the implementation of the Women's Convention in the national minorities policy, the immigration policy and the asylum policy.*

## **8.2 Nationality rights**

The government states in the Third Report (p. 68) that the proposed changes in legislation concerning nationality do not influence the position of women. There are indications that this is not quite true. The law makes some exemptions on the obligation to give up one's nationality. These exemptions concern matters like military service or loss of fortune. These criteria might be indirectly discriminatory for women because women cannot fulfil these criteria as easily as men. To our knowledge the government has not conducted a Gender Impact Assessment (GIA) on this subject.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government to conduct a Gender Impact Assessment on the proposed changes in the law on nationality.*

## **8.3 The income requirement for family reunification**

If a non-Dutch partner is to be considered for the right to enter the Netherlands and to settle here for family reunification, the partner already resident in the Netherlands must be able to provide sufficient income. If this condition is fulfilled, the non-Dutch partner will then be granted a dependent right of residence. The government argues in the Second Report that this income requirement does not cause problems for working women who apply for a dependent right of residence for a male partner who wishes to settle in the Netherlands (p. 53). However, the source quoted at this point in the Report is unclear about whether single women have more difficulty in fulfilling this requirement than their male equivalents. Here, we are left wondering about the specific research that this conclusion is based on and about whether it is sufficiently representative of the population group in question.

For the time being, the presenters of this shadow report intend to stick with the generally known fact that women are in a weaker position on the Dutch jobs market than men in terms of actual participation and wages. This is even more true of black, migrant and refugee women whose position on the jobs market is still more disadvantaged than that of indigenous women. For this reason, the women's movement believes that the income requirement indirectly discriminates against women, and particularly against black, migrant and refugee women and women with children, because it is more difficult for them to fulfil the income requirement test than it is for men. This may constitute a violation of Article 15, Part 4 (equal rights in choice of domicile). The presenters of this shadow report are of the opinion that there

is no question here of a 'pressing social need' that would justify this form of indirect discrimination.

In the Third Report (p. 68) the government describes the review of the Aliens Law and states that the Bill contains no provisions relating specifically to women, but mentions a number of aspects that might be relevant. At this point it fails to mention the fact that the income criteria in the new Aliens Law are far more severe than they were in the old law. The government did not carry out a GIA on the Bill to change the Aliens Law. In our opinion under the new Law it will become even more difficult for women to meet these criteria and to have a chance to actually be reunited with a non-Dutch partner. Women who are studying or who work part time because of their care for children might thus be forced to work full time in order to earn enough money to meet the new criteria. This can also happen when during the period of the dependent residence permit of the non-Dutch partner (3 years) the family income sinks below the income requirement. Otherwise the partner might be expelled. This is a worsening of the position of women. The new Aliens Law thereby is in our view in breach with the articles 2 and 3 of the Convention that requires appropriate action to ban (indirect) discrimination and to improve the position of women so that women can enjoy their human rights. The right to family life B one of the most fundamental human rights B is thus denied to women.

A second problematic point in this respect is the requirement that the partner already living in the Netherlands has to have a job for the duration of at least one year after entry of the partner into the country. As a result of the fact that women far more often than men have flexible or temporary jobs, this requirement also can have indirect discriminatory effects for women. Again the government has not examined these effects but denies beforehand that the criteria of the Aliens Act might be detrimental to women.

The government also states in the Second Report (p. 53) that the income requirement for women is alleviated by the fact that lone parents with children under the age of five can receive social security without being legally obliged to find work. However, the government intends to abolish this right in general. Recently the government has announced that the existing exemption with regard to parents with children under the age of five (they do not have to fulfil the income requirement test of the Aliens Act in order to be able to get a (dependent) residence permit for their partner) will be maintained. We very much welcome this measure. However, research among Dutch women showed that the exemption for women with a child under the age of five from the income requirement is just about the only exemption that women can qualify for. Other exemptions that have to do with previous employment are beyond their reach. The policy therefore only considers the position of women as mothers and not their position as employees. This also leads to the danger that women might have children in order to be exempted from the income demand. In fact, the Dutch government thought that this was a risk they had to take.

Abandoning the income requirement (and separately granting independent residence permits in case of family reunification) would, the government argues, lead to an increase in forced marriages (Second Report, p. 55). The government does not bring forward any factual evidence for this suggestion. Even if this were to be the effect in some occasions, this is no reason to impede women in general more than men in their choice of partner. For that matter, the Dutch government already tries to combat marriages of convenience through special legislation (see the Second Report, p. 33 and Third Report, p. 42; see also our commentary on article 6, Chapter 6, paragraph 6.2). In our opinion, forced marriages should not be opposed by measures that damage the position of women in general.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government about the data that forms the basis of the claim that imposing an income requirement and a work-duration test for family reunification is not indirectly discriminating for women. What is the basis of the Dutch government's view that imposing these requirements will counter forced marriages?*

#### **8.4 The granting of an independent right of residence following the ending of a relationship**

Women who join their partners in the Netherlands for the purpose of family reunification can acquire a residence permit that stipulates that they have to stay with their partners. (Dependent residence permit.) However, this permit can be withdrawn, if the partner loses his right of residence or if the relationship is ended either in fact or through divorce. This means that these women must depend to a great extent on their partners. They become totally dependent on him, not only in a financial way, but also with respect to matters concerning paid work, schooling or training and socialising with other people. The dependent residence permit establishes a situation of extreme imbalance of power between the partners in a relationship. If the relationship turns violent B which, according to social workers, occurs relatively frequently amongst this group B the woman is then caught between two evils: whether to stay with her abusive partner or to leave and risk losing her right of residence. The improvement of the position of migrant and refugee women with a dependent residence permit should be an integral part of the government's policy against violence against women. This subject, however, is nowhere to be found in Chapter 3 of the Second and Third Report, nor is it dealt with explicitly in the Report on Violence against Women.

The presenters of this shadow report have noted that granting a dependent right of residence to women contradicts both the government's general emancipation policy, which focuses on goals such as the right to self-determination, economic independence and self-development, and its anti-violence policy and its integration policy in which security of residence is viewed as a pre-condition for integration and participation. Under any circumstance the period of three years of total dependence is far too long in the view of the presenters of this shadow report. From the perspective of prevention of domestic (sexual) violence it would be of great help if the government would be prepared to grant independent permits after a period of one year.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government to conduct in-depth research into the effects of a dependent right of residence on the occurrence of violence in relationships. If this research produces conclusive evidence that women in these situations are: disproportionately exposed to their partners' physical and sexual violence, we then request that CEDAW should consider urging the government to take measures that will effectively end this problem.*

A woman with a dependent right of residence whose relationship has ended, will encounter various difficulties of which only the most poignant ones can be mentioned here. If the relationship is ended within a period of three years, she will not in principle be eligible for a right of residence whatever her income may be at that time. In this case, deportation can only be avoided on urgent grounds of a humanitarian nature. While the woman is waiting for the result of a procedure (which may take a lot of time especially if she is appealing on humanitarian grounds), she will officially be allowed to stay in a women's shelter and has a right to social security and other benefits. However, during this period she is not entitled to a

permit for independent accommodation. This in turn makes it harder (if impossible) for these women to leave the women's shelters so that these shelters (which are already constantly fully occupied) become cautious about providing space to abused women who do not have a definite right of residence. In fact some shelters (have to) refuse to provide these women with a room. Thus the government creates a situation in which women are not effectively protected against domestic violence, as General Recommendation 19 requires.

Women who leave their abusive partner within a period of three years only get an independent residence permit on the ground of compelling humanitarian reasons which is only the case if they meet a combination of various criteria. (See Third Report, p. 73.) The fact that they are the victim of (sexual) violence within their relationship is in itself not sufficient to speak of a compelling ground. The presenters of this shadow report do not support the government's policy in this respect. This policy implies a violation of the right of women to be effectively protected against domestic violence, as is obligatory under the Convention (esp. General Recommendation 19).

In the Third Report (p. 71) the government mentions a research project conducted by the Clara Wichmann Institute. From this research it becomes clear that in a majority of cases in which the woman prematurely leaves her husband/partner, she will, in the end, get an independent residence permit. However, the Third Report is not quite complete in the presentation of the figures that came out of this research. The government (conveniently!) 'forgets' to mention the fact that in the first instance only 6% of these women acquire an independent permit. Only after long administrative and court procedures (of an average duration of two years and three months) 80% get this permit, 77.5% of those after a negative decision in first instance. This means many years of uncertainty for these women (also meaning not being able to obtain independent housing facilities; see above). The above mentioned research by the Clara Wichmann Institute also shows that the reasons why women do or do not get the permit are often not clarified by the authorities or judges. The conclusion of the researchers is that the adding of the criterion 'sexual violence' in 1997 in the regulations (Second Report, p. 54) has not improved the position of women with a dependent residence permit in a substantive way. When they are abused or the victim of (sexual) violence they can still never be sure that they will get an independent permit when leaving their partner. In many cases they do not dare to take the risk of being expelled from the country. The recent policy changes, mentioned in the Third Report (pp. 72/73) therefore do not bring any improvement for these vulnerable women. As such the government fails to implement the Convention.

In the same policy document the government has announced that the rules concerning income and other requirements for persons with a dependent residence permit are going to be changed. (Described in the Third Report, p. 73.) After three years of resident with his/her partner this person can obtain an independent permit, whatever his or her income might be and without the need to prove that there are compelling grounds of a humanitarian nature, unless this person constitutes a threat to public order. The presenters of this shadow report are very happy about this change in policy. However, they want to stress that intense campaigning by pressure groups of women during at least 20 years was necessary to bring about this change. This makes clear how important women's grassroots organisations are in improving the position of women.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government to grant independent residence permits to women with a dependent right of residence who leave their partners because of abuse or (sexual) violence.*

### **8.5 Towards harmonised family reunification policies in the European Union**

The European Commission is presently working on proposals for harmonised family reunification policies. This subject is not mentioned in the Third Report. Clearly it is important that these proposals be monitored for their possible effects on women. Already in 1987 the European Parliament expressed its concern over the negative impact on women of the immigration policies of the various member-states, and particularly the policies regarding family reunification and continued residence of immigrants with dependent status. The European Parliament also passed a resolution that addressed many of the issues that have been raised in this shadow report, such as income requirements, restrictions on transnational marriages, the vulnerable position of women with dependent status etc. When the various ministers responsible for immigration policies convened in Copenhagen in 1993 to draft a resolution concerning harmonisation of family reunification policies, they made no reference at all to the European Parliament's resolution. In fact, many of the proposals the ministers made were completely opposite to what the European Parliament had recommended.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government which steps it will take to ensure that serious attention is given to women's interests during the process of achieving harmonisation of immigration policies within the EU, and in particular which steps it will take to ensure that serious attention is given to the European Parliament's resolution of 1987 during this process.*

### **8.6 The Newcomers Integration Act**

In both the Second and the Third Reports the government mentions the Newcomers Integration (or Assimilation) Act as a step forward in the integration of black, migrant and refugee women. The government at this point fails to report on the fact that the way in which this act is implemented largely neglects the special position of women who come to the Netherlands on the basis of a dependent residence permit. Often these women are totally dependent on their partner in taking decisions concerning participation in paid labour or schooling and training programs. (See above.) Besides the Newcomers Integration Act does not offer opportunities to use day care for children during the hours the courses have to be followed, nor do these courses necessarily have to take place during the normal school day. When drafting this Act the government failed to apply a Gender Impact Assessment. The Act concentrates on newcomers, thus neglecting the position of black, migrant and refugee women who already live in the Netherlands, often in a very isolated family situation. When the Bill was discussed in parliament women's organisations issued a warning about the possible effect that newcomers will get facilities to the detriment of the possibilities for BMR-women who already live here to use educational or job-training programs. The evaluation of the Act shows that this indeed has happened.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government to evaluate the Newcomers Integration Act with respect to the effects this law has on the situation of women with a dependent residence permit and of women who already live in the Netherlands.*

## **8.7 Undocumented women**

Women who stay in the Netherlands without a valid right of residence form a particularly vulnerable group (see the Second Report, p. 58). They often depend on a partner who is the breadwinner while they do the household work; alternatively they work on the basis of flexible contracts, or illegally in a private home or in the sex industry. Moreover, it is generally more difficult for women with children to find regular paid work. In general there is an increase in the number of female labour migrants. In recent years we can see a substantive increase in the number of undocumented women working in private households.

Undocumented women are, due to their position and the type of work done by them, far less frequently included in the taxation and social systems than undocumented men. When working in private households or in the sex industry they are almost by definition not included. Women's paid and unpaid activities thus do not count towards the granting of a right of residence to particular groups of illegal immigrants who have been active for a long time on the Dutch jobs market. This is due to 'regularisation regulations' and what has recently been described as the 'registered illegal aliens regulation'. These regulations affect groups of illegal people who can prove that they have a social and fiscal number, something you get when you are engaged in paid work. On that basis under certain conditions you will get a residence permit. Because they tend to do 'typically female jobs' in private households et cetera and are largely invisible, women often excluded from this regulation which, in the opinion of the presenters of this shadow report, constitutes a form of indirect discrimination of women. We recommend that women should also be permitted to prove that they have lived in the Netherlands during a certain period by showing other documents, like a membership card of a health insurance or a registration at the municipality.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government to introduce measures so that all forms of work are equally valued in the granting of rights on the basis of the 'registered illegal aliens regulation'.*

## **8.8 The Linkage Act**

The Linkage Act concerns the position of women without a right of residence; they are also described as undocumented women. In general, the government acknowledges that the position of illegal women is extremely vulnerable because they are more likely to become the victims of abuse or ill-treatment (Second Report, p. 58). However, the presenters of this shadow report are of the opinion that the introduction of the Linkage Act has actually worsened the position of undocumented women. The Act forces these women into illegality and makes them all the more dependent on the 'protection' of men (who often abuse them or exploit them sexually). Moreover, black, migrant and refugee women often carry the additional burden of caring for and supporting illegal partners and other family members. It is important to note (again!) that prior to the enactment of this law the government did not conduct a Gender Impact Assessment.

Although in February 2000 three organisations have reported on the negative consequences of the Linkage Act for illegal women, women refugees who are the victims of violence, and women with a dependent residence permit who prematurely leave their partner the government nowhere in the Third Report discusses that issue. The organisations bring forward a number of serious problems that these women encounter as a result of this law and suggest ways to alleviate their situation. In fact through this law the government itself plays an active role in the continuation of violence against women.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government to thoroughly evaluate the effects of the Linkage Act on illegal women in the light of the obligations of the Women's Convention, thereby taking the evaluation by the women's organisations into consideration.*

One of the problems of this Act, already mentioned above, is that women with a dependent residence permit who have left their partner because of domestic violence cannot get a permit for independent accommodation. Illegal women who are the subject of violence cannot apply at all for social assistance and for a shelter, nor for medical care. All of these facts are contrary to the obligation to protect women from violence (General Recommendation 19.) In extreme emergencies they are entitled to medical aid, but many women are afraid of the consequences in terms of being expelled from the country. Since 1995 a midwife has had to fill out a birth-certificate. As a result of that pregnant illegal women fear to ask the help of a midwife. This also goes for the registering of their babies at the municipality: when doing so they run the risk of being registered at the Aliens Branch. Another consequence of the Linkage Act is that doctors risk non-payment when they do provide medical treatment for undocumented aliens who ask for medical aid. This in turn means that doctors will tend to enquire about the right of residence which makes it more threatening for this category of patients to ask for medical treatment. The position of pregnant women is not explicitly mentioned amongst the exceptions to this Act (see the Second Report, p. 52). Hence, undocumented pregnant women are often excluded from the normal pregnancy checks and infant welfare services, from medical control after they haven't given birth and maternity care. This clearly is contrary to the obligations of the State mentioned in article 12 par. 2 of the Women's Convention. In exceptional cases (i.e.: when a doctor or midwife has treated many illegal patients so that he/she gets into financial trouble), a doctor or midwife who provides this treatment, can apply to an emergency fund. However, this fund is not at all well known amongst health carers. Instead of the government assuming responsibility for providing normal medical care for undocumented pregnant women and their children, it makes doctors as a profession responsible so that they must take the risk of providing treatment for which they may not be reimbursed.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government as to whether reliable statistics are available about the effects of the Linkage Act on the health risks suffered particularly by pregnant women and those who have just given birth. If these statistics are not available, the government should be urged to rapidly conduct an evaluation of the effects of the Linkage Act concerning this point.*

## **8.9 The position of women asylum seekers**

In the Second Report, the Dutch government deals with the refugee criteria of the Geneva Convention. This also includes a statement that the Dutch asylum policy is sex-neutral: both men and women go through the same procedure. However, the Report does mention three *working instructions* that are specifically aimed at refugee women. Moreover, the government also refers to a report about refugee women by the Research and Documentation Centre (WOCD). This report was published in 1998. In the Third Report (p. 71) the government states that from research it has become apparent that '(T)here is no evidence that reasons for seeking asylum specific to women, or the reasons many women cite, affect their chances of being granted admission'. Although we recognise this outcome we still feel that the government insufficiently deals with the specific problems of women refugees. Moreover, it is not clear whether women have as much chance as men to get refugee status or whether they

are mostly given a residence permit on humanitarian grounds, which is a much weaker residence status.

Both in the Second and in the Third Report the government remains unclear about the way in which Recommendation 44 of the Groenman Commission has taken shape in its policy. This recommendation about the implementation of the Women's Convention was unanimously supported by the women's movement at the Nijmegen conference. It contains the following in terms of entry conditions for women seeking asylum either as refugees or on humanitarian grounds: the importance of recognising (1) the needs of women who have been the victims of sexual violence perpetrated by the authorities, military forces or the armed resistance of civilians, and (2) the needs of women who have been the victims of ideologies or gender stereotyping views that discriminate against women.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government about the way in which it deploys criteria that do justice to the specific position of women and to gender stereotyping views when deciding on the entry of women as refugees.*

Although the government indicates in the Second Report (p. 55 onwards) that there is an increasing awareness that physical and sexual violence against women constitute possible grounds for granting asylum, and that civil servants and other officials have received additional training and instructions on this point, nonetheless there are still many complaints that immigration and naturalisation officials are insufficiently aware of this issue. In practice, rape and sexual violence (in particular) are all too frequently identified as a 'civil offence' rather than as acts of (political) persecution, even when the woman has been attacked by officials (like police men) during their interrogation. Moreover, as many of these acts of violence or intimidation take place in the home or in connection with family relationships these are not recognised by the officials as being 'public' or 'political'. Women who protest against the disappearance of relatives, for example, are seen as 'sad women', not as women who are politically active. In this way all kind of offences against women are 'privatised'.

Another problem is that the flight motives of women who seek asylum often are equated with the flight motives of their husbands. Their motives are often seen as motives on the ground of kinship instead of on the ground of their own political activities, which in a number of cases are overlooked in the report. In a number of cases it appears that women who leave their country without their husband are not believed to have serious grounds to flee because the husband apparently does not have a reason of his own to do so. All of these examples show that the work of the civil servants of the Immigration and Naturalisation Service (IND) still is highly influenced by gender stereotypes on the (proper) role of women (in the house!).

Supplying separate *work instructions* on women, like the Dutch government reported in the Second Report, probably has less effect than focusing on gender issues in every 'ordinary' *work instruction*. There is an urgent need for research into the effect of the measures that have been introduced up till now. In the Third Report the government states that no evaluation of these *work instructions* has taken place until now, but it does not indicate when and how it plans to do so.

This evaluation should especially concentrate on the way in which the reports of the asylum interview by officers of the Ministry of Justice's Immigration and Naturalisation Service (IND) are drawn up. The reports are in the format of a free reproduction of the interview. This leaves open a lot of space for the (unconscious) cultural and gender specific biases of the civil

servants. The possibility for the refugee to correct the report does not offer enough relief; corrections are easily seen as proof of unreliability. At least the hearing should be recorded on tape, there should be a transcription of that tape and the tape plus transcription should be stored, so that in the case of an appeal the refugee can use them.

The aforementioned evaluation should concentrate not only on the role of the IND but also on the role of the civil servants of the Ministry of Foreign Affairs who, through compiling official memoranda, have an extremely important influence on the decision-making process concerning requests for asylum. For a number of years these reports have contained a paragraph on the situation of women. Apart from this passage the position of women is completely neglected. A better way to deal with this is to 'mainstream' this subject: in every paragraph (political, economic, legal and cultural situation) the situation of women should be an integral part of the report. Practice has taught us that these civil servants have a very limited understanding of the gender-specific aspects of political and military violence, and political persecution. Sometimes they tend to have stereotypical attitudes, for instance: by using traditional customs such as arranged marriages to justify the deportation of women. This completely contradicts the criteria of autonomy and the right to self-determination set forward in the official Dutch emancipation policy. Moreover, the information about women in these official memoranda is far too superficial: it in no way reflects women's socio-economic, legal and political position. This in turn makes it difficult for the IND officials to monitor these women's stories of being forced to flee. The official memoranda form a crucial element in the procedure. The Second and the Third Report do not elucidate this part of the procedure in its entirety.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government to conduct in-depth research about implementing practices affecting women refugees (and involving the role of both the IND and the Ministry of Foreign Affairs). Should the research produce conclusive evidence that women refugees are not being adequately helped, the Dutch government should also be urged to take measures that will effectively end this problem.*

## **Chapter 9 Article 10: Education**

### **9.1 Care in education**

In both Reports the government mentions three different policy goals with respects to the education of youngsters: (1) to acquire economic independence, (2) to be able to care for themselves and (3) to acquire the skills needed for active participation in society. (Second Report, p. 64, third Report, p. 83.) With respect to all three objectives it is important to combat all stereotypes on male and female behaviour in education (which is compulsory on the basis of article 10 sub c, in relation to article 5 sub b. In 1993 the subjects 'care', 'technology' and 'vocational guidance' became compulsory in secondary education in the Netherlands. That care was taken on as a subject was the result of a very effective lobby by the women's movement. Despite seven years of experience the Third Report does not mention an evaluation of these subjects with respect to the question if and how they contribute to the breaking down of gender stereotypes and offering more diverse professional perspectives to girls and boys. In general the presenters of this shadow report are of the opinion that more government action is needed with respect to the second policy goal. In that respect it is too easy to 'shelter' behind the freedom of conviction or religion, like the government does in its Reports.

*The presenters of this shadow report request CEDAW to consider asking the Dutch government why an evaluation of impact of the new subjects 'care', 'technology' and 'vocational guidance' in secondary education in terms of their contribution to the abolishing of gender stereotyping has not taken place after seven years.*

## **9.2 Participation of girls and women**

The presenters of this shadow report agree with the government that the participation of girls in education is high. Girls are no longer under-represented in higher education. (Third Report, p. 78.) However, the figures on education and training presented by the Dutch government in the Second and Third Reports also show that there still is both horizontal segregation affecting the participation of girls as students, and vertical segregation affecting the participation of women as teachers and members of the managerial staff. There has been little progress over the last few years, particularly in terms of the participation of teachers.

The figures the government has supplied about the actual choice of girls and boys in the upper forms of secondary education between the four possible types of subject combinations (Third Report, p. 84) show that choices still are made in a very traditional way. The government does not announce any measures at this stage about how to improve this situation.

The government does admit that special measures to solve the limited participation of girls in training for technical professions and technical universities are necessary. One of the measures mentioned is the instrument of 'techno-mentoring' (Third Report, p. 84). It states that 20 Regional Training Centres have experience applying this instrument, but it does not give any information about what kind of experience (good or bad!) this is. Other projects that are mentioned are Technova and Viking, initiatives of a private organisation called VHTO. (Third Report, p. 85) At this point the government, again does not take any action itself. There are also no concrete measures to improve the relatively weak position of black, migrant and refugee girls in education.

In terms of the increase in female educational staff and women in educational management, a 1997 act compels all educational institutions to report on the positive action policy that they deploy. However, 'The Proportional Representation of Women in Managerial Posts in Education Act' does not stipulate the target figures that these institutions must fulfil. In addition, the act does not include sanctions for the failure to develop this policy. As yet there appears to be no provision for an evaluation of this legislation. The Third Report (p. 82) mentions a report by the Education Inspectorate, from which it becomes clear that only 60% of the institutes had complied with the obligation to produce a policy document including targets. The Report does not indicate how this situation is going to be improved, nor whether and/or when the government considers a change in its policy (e.g. putting sanctions to institutes that do not develop any policy plan.) The presenters of this shadow report are of the opinion that the government at this point does not fulfil the requirement, set by General Recommendation 5, that governments must have adequate positive action programs in order to overcome past discrimination against women.

*The presenters of this shadow report request that CEDAW should consider urging the Dutch government to further develop effective instruments to increase the participation of girls in technical professions and to increase the participation of black, migrant and refugee girls in education in general. Does the Dutch government intend to take any steps on the basis of the*

*1999 evaluation of 'The Proportional Representation of Women in Managerial Posts in Education Act' (WEV) and, if so, what steps will be taken?*

### **9.3 The position of teaching staff**

A last point of criticism at this point of the governmental reports is that neither the Second nor the Third Report mentions the fact that, with respect to teaching, serious problems exist in the Netherlands, especially in relation to primary education: schools are understaffed, salaries are (comparatively) low, teaching personnel is working under great stress, etc.. This means that the image of teaching as a profession has been seriously damaged over the last decades; fewer and fewer youngsters apply for jobs in that sector. As this traditionally is a sector where many women work (like in medical care) this especially affects the position of women. This situation not only calls for action in the sphere of more resources (money) for education, but also in the sphere of rebuilding the image of this profession. In that process it is very important (like in many other sectors) to take measures by which a reevaluation of care can take place: caring should be seen as a substantive part of a profession like teaching.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government how it intends to improve the conditions under which teaching staff have to work and whether it intends to promote a reevaluation of care as an important aspect of the professional attitude of teachers.*

### **9.4 Information and Communication Technology in education**

Research makes clear that girls do have a different attitude towards the use of computers than boys. When computers are used in education therefore this will affect girls differently. Much software is quite 'aggressive', while girls like to use creative and adventurous programs. When boys and girls have to share the use of one computer it is mostly the boy who controls the keyboard or mouse. The development of software for educational purposes is a time consuming and expensive enterprise. It is dubious whether the above mentioned differences between girls and boys are sufficiently taken into consideration in this process.

*The presenters of this shadow report request that CEDAW should consider urging the Dutch government to specify how the gender specific aspects of the use of computers are dealt with in the process of introducing computers in schools.*

### **9.5 Drop outs**

Because relatively few girls drop out of school the government does not deem it necessary to develop any specific policy in that respect. (Third Report, p. 76.) We think this is an inadequate response to a serious problem. Dropping out of school means less possibilities to gain economic independence and to acquire the necessary skills with respect to full participation in society. The government does not deny that girls also drop out of the school system. Gender specific research about the different causes for girls and boys should be undertaken. After that programs specifically directed at these different reasons should be developed.

*The presenters of this shadow report request that CEDAW should consider urging the Dutch government to investigate the causes why girls drop out of the school system and to develop specific measures to prevent this happening.*

## 9.6 Gender Impact Assessments

The Ministry of Education is quite active in conducting gender impact assessments on policy measures and legislation that it intends to issue. The presenters of this shadow report are glad that this Ministry thus sets an example of good practice, especially where the Ministry has evaluated the effectiveness of this instrument and has taken steps to improve the situation after that. In the Third Report the Ministry, however, does not report on the outcome of the assessments: was or was not a change in policy actually necessary on the basis of the GIAs that have been held?

*The presenters of this shadow report request that CEDAW should acknowledge the example of good practice set by the Ministry of Education with respect to the implementation of Gender Impact Assessments. However, it might be useful to ask for a report on the specific results of this instrument.*

## Chapter 10 Articles 11 and 13: Employment and social security

### 10.1 General remarks

In the Netherlands, there has been much progress in women's participation in employment over the last ten to twenty years. This is effectively reflected in the Plantenga Report which is also mentioned by the government in the Second Report (p. 67, footnote 28). However, as the government admits, there is no question of complete equality between women and men in terms of issues such as equal wages, the abolition of the horizontal and vertical segregation of the jobs market, and the realisation of equal rights to social security. In addition, there has been no real progress vis-à-vis the participation of men in unpaid care tasks.

The figures presented in the Third Report clearly reflect the latter fact. Compared with an increase of 1.25 % in the labour market participation of women there is a meagre increase of 0.3% when men's participation in unpaid work is concerned.

The presenters of this shadow report are of the opinion that the figures concerning the economic independence of women are less reassuring than the government suggests. (Third Report, p. 88.) The government uses the individual minimum wage as an indicator for economic independence. In the first place a lot of women realise this 'target' not by paid work (as the government suggests) but by social assistance or social security benefits, due to the fact that there is a lot of unemployment among women and that comparatively many women are on sickness- or disability payments. It is not clear that the government has included these incomes in its statistics as presented in the Third Report. Besides, the individual minimum of 70% of the 'family minimum wage' is very low. One can hardly call that an income to live on independently. The use of the term 'family minimum wage' in this context is misleading because in fact all *individuals* above 23 years of age have a right to this wage (for a full-time working week), independent of family circumstances.

The description of the state of affairs in Chapter 8, par. 1a, of the Third Report, combined with the government's targets for the year 2010, give the impression that the progress made in the past period is due to government action. This suggestion is reinforced where in paragraph 1b the government mentions a number of legal measures. However, these measures are still to be taken in the future. The government does not prove or indicate in what way and to what extent the progress that has been made is due to its own emancipation policies or to

autonomous economic and social developments. The presenters of this shadow report want to point out at this stage that the government in the field of employment and social security (as in many other fields) fails to evaluate its own emancipation policies in a serious way, as well as fails to (in advance) apply the instrument of the gender impact assessment (GIA) to policy measures that might have an impact on the labour market or social security position of women.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government to present an evaluation of its own emancipation policies with respect to the question if and to what extent these policies have contributed to the progress in the labour market participation of women over the last few decades and urging the Dutch government to use GIAs in the fields of employment and social security?*

## **10.2 The Report on motherhood, parenthood and employment**

To cover the subjects of motherhood, parenthood and employment, the government commissioned a report that was to be drawn up according to the National Reports' procedure. The report was written by a panel of independent experts and it examined the extent to which these areas had complied with the Women's Convention. This resulted in a great many recommendations for improving the position of pregnant women and those who have just given birth. The authors compared the commitments contained in the Women's Convention with those represented by other legal stipulations, such as the ILO conventions which are recognised internationally. The presenters of this shadow report feel that the report on motherhood, parenthood and employment has spotted some serious difficulties affecting women's legal position in this respect; consequently they urge that the recommendations contained in this report should be implemented immediately by the Dutch government.

In its reaction to this report the government stated that it does not agree with the findings of the researchers. The government feels free to disagree because in its own view the words 'all appropriate measures' in Article 11 provides the government with a great deal of freedom when fleshing out the convention commitments in policies. The discussion on this point concentrates on the precise impact of article 11: does this article contain concrete obligations that should be fulfilled by the government or does it only contain general directions that leaves the government a big margin of discretion? It would be very useful if CEDAW would consider drawing up a General Recommendation on this article, specifying the obligations that State Parties have with respect to motherhood, parenthood and employment

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government how it intends to implement the recommendations of the National report on motherhood, parenthood and employment. The presenters of this shadow report also request that CEDAW should consider drawing up a General Recommendation specifying the concrete actions concerning motherhood, parenthood and employment obligatory under article 11 of the Convention.*

The presenters of this shadow report would like to draw CEDAW's special attention to the difficulties mentioned below. This is because either the government has included insufficient information about them in the Second or Third Report, or the NGOs feel that the government has not gone far enough in terms of *taking all appropriate measures*, a requirement that must be fulfilled on the basis of the Convention.

### **10.3 Women's unequal remuneration**

The Second Report contains little information about the continuing wage differential between men and women. Recent research by De Jong & Van Doorne Huiskes showed that the wage gap has remained at 25% for more than 30 years now. This difference is even greater in more senior positions. European research (Eurostat 1999) has shown that in terms of equal wages, the Netherlands shares the bottom three places with Greece and Great Britain. Government efforts to close the wage gap have been neither rapid nor ambitious; the only concrete measure that the government mentions in the Second Report consists of producing an informative brochure.

In the Third Report the government describes its new policy plan on this topic. (Third Report, p. 109.) First the government states that there now is a wage gap of 23%, which can be explained by factors relating to differences in age and function. Next it declares that 7% of the wage gap between men and women cannot be explained. According to the government this 7% difference might be caused by discrimination, but also by other factors. The government ignores the fact the 23% difference is also partly caused by gender biased factors. Different functions are often differently paid on the basis of gender biased job evaluation schemes. (See below)

The plan of action presented by the government is very weak in the eyes of the presenters of this shadow report. There is a discrepancy between the fact that the government according to various International Conventions is under the obligation to combat discrimination and to stimulate equal treatment with respect to pay and the point of view set out in its new policy plan that the social partners should take their responsibilities in this respect. The concrete measures taken by the government are 'to increase awareness and expertise'. Also it plans to develop a 'quality assessment' with respect to job evaluation schemes. In the view of the presenters of this shadow report these measures are not at all adequate to effectively combat direct and indirect wage discrimination. With respect to increasing awareness and expertise it remains unclear how the government is going to achieve this. The quality assessment is merely an analytical tool to study the content of existing job evaluation schemes. This instrument is only useful with respect to some (analytical) types of job evaluation schemes. This instrument is not useful when applying schemes in practice. There are serious indications that the content of many schemes as such is not discriminatory but the way these schemes are applied in practice is. In other words: the use of the assessment procedure is not a guarantee at all that gender-neutral systems will be used in the future. Also the announcement in the plan to periodically *monitor* the wage gap cannot be labelled as a serious policy measure to effectively *combat* wage discrimination. The reason why the Netherlands scores so badly compared to other European countries has never been researched.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government about how it intends to effectively close the wage gap within the foreseeable future.*

### **10.4 Unemployment amongst women**

Although, in the Second Report (p. 69) the government recognises that registered unemployment amongst women is nearly twice as high as unemployment amongst men, no suitable measures are mentioned that can counter this situation. On the contrary, the subsidising of the Women and Work Shops, a special employment mediation service for

women, has been terminated as a part of the mainstreaming policy (the Second Report, pp. 82 and 83). A Covenant between the government and the social partners has been drawn up in this respect. It is not clear what the result of the mainstreaming policy at this point is.

In the Third Report the government altogether fails to mention the fact that unemployment among women is still 1.5 to 2 times as high as among men (depending on definitions used in the statistics). Nor does the government mention the fact that the risk of becoming unemployed is higher among women as a result of the fact that women are disproportionately likely to be dismissed. When summing up the activities for jobs for the 'hard to place' (Third Report, p. 111) the government does not specify to what extent women have been targeted as 'clients' of these activities, nor does it specify to what extent these measures have proven to be effective in the sense that women have gained access to paid labour through them. It is poignant that women who want to re-enter the job market after a period of being a 'housewife' are not mentioned here as a group with specific needs. In other words: no gender specific measures are taken, nor are the measures evaluated in terms of their different effects on the men and women. A serious problem is that if unemployed women are eligible for training and schooling these never can be schooling programs of a somewhat longer duration and at a higher educational level. The employment offices are only willing to subsidise training programmes of a short duration, that are directly leading to a job. This means that women who have suffered from past discrimination concerning their possibilities to educate themselves are not offered possibilities to wipe off arrears. Another problem, also not mentioned in the Second or Third Report, is the fact that in the Netherlands many women are 'under employed', often in small part-time jobs. This often is due to the fact that women have left the job market for a number of years when their children were small and fail to re-enter the job market on the same level as they left it because of a knowledge gap and lack of recent job experience. This also calls for additional training programmes for women.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government which measures exist that are specifically intended to combat unemployment amongst women. Has there been an evaluation of the effect of the integration of the Women and Work Shops into the regular range of employment mediation and job training services?*

### **10.5 The positive action policy and the glass ceiling**

During the period between the First and the Third Report to CEDAW, the Dutch government largely neglected its former policy in which positive action was actively developed and supported. Instead this was replaced with the Opportunity in Business program (see Second Report, p. 80). Although this program was launched in 1996, its effects have apparently not yet been evaluated. It is now the recipient of virtually all of the government's material and financial support for positive action programs. However, Opportunity in Business will be expected to be self-financing in the long term. This ultimately means that the government will no longer provide any form of financial support for a positive action policy. There is no mention of any other program that can stimulate positive action in the Second or Third Report.

Instead of the 'traditional' instrument of positive action (including preferential treatment) of women the government in the Third Report announces that the problem of the glass ceiling will be one of the spearheads of its emancipation policy in the year 2000. The issue is dealt with under the heading of 'cultural change'; thus it is of no surprise that the measures taken are all of a very 'soft' nature (no concrete action to enact new laws or to propose concrete

improvements in the position of women). From the description in the Third Report it follows that not all ministries are involved in the plans. No actual targets are set, nor is it announced when and how this 'offensive' will be evaluated. The round table conference was held, but according to some participants from the women's movement it was organised in a doltish way, setting the date at a very late stage so that many people were not able to come at all. (This appears to be exemplary for the way the Emancipation Policy Co-ordination Department operates.)

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government about the results of the Opportunity in Business project. Can the Dutch government indicate which other instruments (financial and otherwise) it is currently using so as to promote positive action? What are the concrete targets set in the project to smash the glass ceiling and when and how is this project going to be evaluated?*

### **10.6 Facilitating the combination of paid work and care**

In the Third Report (p. 92) the government announces a package of legal measures to improve the combination of unpaid care activities and paid labour. This plan has to result in a Work and Care Bill. A considerable part of the unemployment of women is due to the fact that employers are not flexible enough in adapting their work organisation to the demands following from combining work and care. This makes it very important that the policy of the government is (also) directed at employers. The Work and Care Bill is mainly a compilation of already existing rights of employees, offering hardly any improvement of these rights. The first part of the Act consists of a right for employees to adapt their working hours. This right, however, in the view of the presenters of this shadow report, leaves employees with very little effective means to compel an employer to adapt working hours in such a way that a combination of care and paid work will become possible. The employer has the opportunity of bringing forward 'compelling business interests' to prevent such an adaptation. Companies with less than 10 employees are exempt from the obligations under this law altogether.

In the field of the right to paid leave, with the exception of a three week period of adoption leave and the legal right for fathers to stay home during the first two days after their partner has given birth to a baby, the Act contains virtually no new unconditional rights for employees. Also new is a conditional right to short-time care leave for a maximum of 10 days per year. Again the employer can bring forward compelling business interests, which can prevent the employee actually using his/her 'right' to care leave. The possibility to save money or time for extra leave, described under the heading 'accumulation of leave' (Third Report, p. 94) and the possibility for a long duration right to care leave at first sight offer more possibilities to combine care and paid work. However, the saving of leave only offers possibilities to employees who have enough rights to paid leave. This often is not the case with women who work on flexible contracts and other temporary contracts. This means that the extension of the right to a long duration leave is the only really important improvement for workers who need to combine care and paid work, announced by the Dutch government in the Work and Care Bill. However, this is still to be studied, so no concrete plans have been made public yet. At close inspection we see that what the government offers here is an empty shell: the leave will be unpaid and it will be conditional (on the same possibility for the employer to bring forward compelling business interests). Experiences with unpaid parental leave have taught us that such a system will enhance the traditional 'choices' of males and females: females (being the minor earner) will be inclined to use the right to unpaid leave, whereas men will not be inclined to do so at all.

All the other forms of leave mentioned by the government in the Third Report (pp. 93/94) already exist. Some of them are now formalised and slightly restructured.

Following the results of an evaluation of the 1991 Parental Leave Act one should expect serious measures to improve the possibilities of using this (unpaid) facility. In short the evaluation shows that the Act is used in a very limited number of cases (12% of the fathers use it, 28% of the mothers). The main barrier being the fact that this leave is not paid. In this respect it is important to note that the government does mention an evaluation of the Career Break (Funding) Act (Third Report, p. 96) but at the same time fails to describe what the effects of this Act in the past few years have been. The presenters of this shadow report know that these effects were very minimal, due to the fact (among others) that the rights that this Act offers are not well known among employers and employees and also due to the requirement that you can only get a subsidy from this fund when you succeed in finding an unemployed person with a right to social security to replace the person on leave. The government has not announced a change in these conditions in the Work and Care Bill.

All in all the presenters of this shadow report are very disappointed about the measures to improve the combination of care and paid work which in the Report are presented as a major step forward. We do not share that opinion of the government at all.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government about the gender impact of the proposed Labour and Care Act, especially with respect to the conditional and unpaid care arrangements that are proposed by the government.*

### **10.7 The dominance of the combination model: towards more diversity**

The government in its policies strongly aims at the so-called 'combination model'. (Third Report, p. 112.) In theory this is the model that reflects the wishes of men and women concerning the combination of paid and unpaid work most adequately. However, it is questionable whether this model really reflects the most probable course that emancipation will take in practice, given the figures about the very minimal progress gained until now with respect to the participation of men in caring activities. (See above, under *General remark*.) The fact that many women do not have a partner to share their care responsibilities and their responsibility as a breadwinner makes this model hardly adequate to meet specific needs. It is also questionable whether this model is not culturally tainted, in the sense that women and men from other than the traditional Dutch culture might have different wishes concerning the way in which they want to structure their work and caring activities. It is well known that black, migrant and refugee women often have other perspectives on paid work and motherhood than Dutch women traditionally have. From that point of view the one-sided attention the government gives to the combination model is highly problematic. As such the promotion of the combination model by the government is in every respect contrary to a 'diversity policy' (as it claims to follow!).

The presenters of this shadow report therefore plead for a more diverse strategy by the government, also paying attention to the possibility that some women want to solve the problem of combining care and paid work not by having their partner doing his share of caring but by 'buying' paid care activities from professional carers (often women as well). The policies necessary to support the so-called 'contracting out model' (Third Report, p. 112) therefore should be examined as well. In our view this means (among other things) that it

must become possible to 'white wash' domestic work and caring for children (often for this work no income is declared and domestic workers do not fall under the social security system), that the working conditions and the salaries of workers in day care centres will have to be improved, that volunteers who work at schools during the midday break will have to be properly trained and paid and that the possibilities of introducing subsidies for 'personnel home services' should be examined properly.

*The presenters of this shadow report request that CEDAW should consider inviting the Dutch government not only to promote the so-called combination model, but also to improve the conditions under which people can choose for other possible options to combine work and care, for example by means of the contracting out model in which they will be facilitated to 'hire' carers to take over some of their care work. What does the government do in terms of improving the working conditions of paid carers?*

### **10.8 The Daily Routine Committee**

In the Second Report (p. 90) the government describes the recommendations by the Daily Routine Committee. In the Third Report it describes the follow up on the recommendations (Third Report, p. 113; see also annexe 2 to the Report). The project is described in Chapter 2 of the Third Report (p. 14). It concerns '(...) a project to facilitate the combination of care and paid work (which) has had a considerable impact on current and new policy processes, both within the various ministries and at local and regional level. It aims to foster the trend towards a fairer division of work and care tasks, responding to the demand for new forms of cooperation and new approaches to land-use planning and time management.' With respect to this project and the steering group that the government has installed in order to make recommendations and a follow-up strategy there is no mention of how the results are going to be measured and whether and how a follow-up to the most successful pilots is planned.

The actions and pilots of the Committee should be seen in the light of the desired combination model. We have criticised this model in the above paragraph of our shadow report. The government describes the initiatives taken in this respect as 'unique'. Although the initiative is innovative within the Dutch context, the government thus ignores or hides the fact that comparable initiatives had been taken much earlier in other European countries, like Italy, the United Kingdom, Germany and the Scandinavian countries. The Netherlands distinguishes itself from these other countries by the relatively small scale and the not-binding nature of the project. Not all of the recommendations of the Committee have been followed. Although 60 million guilders in four years time makes it possible to subsidise a fair amount of pilots, the government does not describe how the follow-up to the most successful projects will be organised and how these projects will be structurally embedded in 'normal' policies. At the very end of Annexe 2 of the Third Report the government states that by the end of the year 2002 this subject will have such a high public profile that it will be justified to terminate the project. We do not share this opinion. A project of a duration of four years is not sufficient to reach the goal of structural change with respect to the organisation of daily routine. This asks for a cultural and structural change that needs more money, time and policies, on both the national and the local level.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government what the basis is of its expectation that the subject of the organisation of daily routine by the end of the year 2002 will have such a high public profile that it will be justified to terminate this project at that time.*

## 10.9 Insufficient day care and after-school centres

In the Netherlands, the demand for good and affordable day care facilities well outstrips the supply. This demand for day care facilities is expected to increase in the future and is based on the Dutch government's combination scenario that promotes the participation of both parents on the jobs market on a part-time basis and where caring for children partly involves other parties.

The government does not indicate how it intends to meet this increasing demand. Although the government has indeed intensified its efforts in the last cabinet period, the measures that it has taken up till now are insufficient to meet this growing demand (the Second Report, p. 86 onwards; the Third Report, p. 101). Finally it suggests that it is the responsibility of the parents, along with employers and the trade unions, to provide a structural solution to this problem (Second Report, p. 89). The government at this point neglects to mention the (radical) measures that it has in mind to solve the shortage of places within the foreseeable future. The new Basic Childcare Provision Bill, discussed at p. 94 of the Third Report does not create a right to childcare, nor does it make the facilitating of childcare by employers compulsory. Women's organisations have pointed out that after-school programs cannot stop at the age of 12, as the government suggests. Another shortcoming of the new act is that the facilities to remain at school during the midday break do not fall within the scope of this act, meaning that criteria about the quality of the facilities are not applicable to this kind of child care. Although it is compulsory for school boards to offer midday facilities, there is no financial compensation from the ministry of education for the schools who do offer these facilities. This means that mothers come in to help or that untrained volunteers take care of children during this part of the day. The result is that often the care provided is very bad. From research by the FNV (Netherlands Trade Union Confederation) and the Dutch Women's Alliance for Economic Independence and Redistribution of Paid and Unpaid work (The Women's Alliance) it has become clear that the bad situation at many schools with respect to the care given during the midday break still prevents many women who want to go back to paid work from actually seeking a job. Apart from financial contributions to this kind of care the government could also improve the situation by making a continuous time-table (with a short midday break) compulsory for all primary schools. This would make the professional staff of the school responsible for the way the children are treated during the necessary short break, instead of unprofessional volunteers.

The possibilities of making use of around the clock care facilities are very rare in the Netherlands. This offers great difficulties for women who work in shifts (like women working in industries, nurses, police women, women working in restaurants, etc.). For many women, often black, migrant and refugee women, these jobs are often the only way to gain an income.

Bearing in mind the partial realisation of the Convention's aims and the government's positive commitment to make every effort and to come up with concrete results, the presenters of this shadow report feel that day care facilities are an example of a subject that should have been sorted out by now, especially considering that the Convention was adopted 20 years ago and that it was ratified by the Netherlands nine years ago.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government to indicate how and when a complete solution will be found to the shortage of child care places for children both up to the age of four (pre-school day care) and from the age of four on (after school day care).*

## **10.10 The proposed change in the taxation system**

In the Third Report the government announces a major change in the tax system, thereby (among other things) abolishing the existing breadwinner model in taxation (the abolition of transfer of personal tax allowance between partners), replacing it with a completely individualised system. (Third Report, p. 107.) The presenters of this shadow report agree with the government that some positive effects on the position of women may be expected. The government, however, is not very specific in its description of what these positive effects might be. Also, the Report does not indicate what will be done with the extra money that the government will receive as a result of the abolition of the breadwinner system. There still is considerable discussion among women's organisations and political parties in the Netherlands about the question what should be done with the money that thus comes available.

Part of the women's movement in the Netherlands feels that the money that will be made available by the planned revision of the taxation system should be completely spent on the extension of day care, midday and after-school facilities. This part of the women's movement argues that this money must be used for this purpose because the transfer of personal tax allowance between partners is intended to support families where one of the partners is completely responsible for looking after the children (the breadwinner principle). Now that the basis will become an individualised income system where both partners earn an income through paid work, it is only reasonable that this money should be used to provide replacement care for children. Another part of the women's movement feels that the money should not be spent on the facilitation of combining paid labour and care but, instead, should be used to minimise the economic dependence of women. This should be done by improving the social security system, thus granting full individualised rights to benefits to all women, also those who are on social benefits (which are still means tested). This part of the women's movement is of the opinion that the extra money needed for child care should be drawn from the enormous amount of extra tax income that the government has cashed as a result of the increased labour participation of women.

*The presenters of this shadow report request that CEDAW should consider inviting the Dutch government to indicate how the extra money that becomes available as a result of the abolition of transfer of personal tax allowance between partners will be spent; does the government intend to spend this money in such a way that women will take full benefit of the proposed changes?*

## **10.11 Unequal treatment in pensions**

In the Second Report's coverage of pensions, the government fails to mention the existence of the various actuarial calculation methods that are based on the different life expectations of men and women. These calculation methods result in the unequal treatment of women: they have to pay higher pension insurance contributions, their employers must also pay higher insurance contributions and, in some cases, these unequal payments can lead to negative adjustments to social security and other benefits, for instance: to pension settlements following a divorce. This inequality in pensions has not yet been corrected by the European Union's equal treatment directives. In its report (p. 101), the Groenman Commission has stated that this inequality is an unjustifiable form of direct discrimination against women and, as such, it contravenes the Women's Convention and should be forbidden under the General Equal Treatment Act (AWGB). In the Cabinet's Reaction (p. 32), the government does not accept this opinion or advice. The government sees no need to apply the General Equal

Treatment Act (AWGB) as yet but states that this point will be included in a future evaluation of the act. The government has made no concrete undertakings to forbid this form of direct discrimination by law.

The presenters of this shadow report argue that this means that the government may be contravening Article 2 of the Convention.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government whether the recently conducted evaluation of the AWGB constitutes sufficient reason to adjust the government's position on the need to apply this act with respect to pensions. Is the Dutch government planning to forbid the unequal treatment of women in actuarial calculations and, if so, when?*

### **10.12 Repairing effects of past discrimination in pension schemes**

As to the Third Report the presenters of this shadow report agree with the government's action taken with respect to pension schemes for women. (Third Report, p. 110.) The proposed new obligation for employers to implement their pension scheme irrespective of the type of labour contract involved will indeed have positive consequences for women in the future. However, the government at this stage in its Report does not indicate how the damage done to the pension rights of women as a result of discrimination in the past will be repaired. With the support of their unions women have brought law suites as far as the European Court of Justice, claiming and winning equal pension rights. This has not resulted in a 'general repair' of the damage done by discrimination against women in the past. This means that individual women have to claim full pension rights from their (often former) employer or pension fund. Often this is very difficult because of time-limits set in civil law procedures and because of employers or funds that have disappeared from the scene. The government has not made compensation (back to 1976, as the European Court has ordained) compulsory but instead has left it to the social partners and pension funds to regulate this matter among themselves.

Another problem in this respect is the position of divorced women. Although there now is a legal right to split the pension rights of their partner at the time of divorce, this right does not apply to most women who divorced from their husband before 1981. This leaves these elderly women, who often as a result of being a full time housewife have no pension rights of their own, without a right to share the pension that their former husband has been able to gain. As a result of the fact that women in the past in the Netherlands did not often participate in paid labour (and if they did they were excluded from pension schemes) many single or widowed elderly women only have an income from the nation pension scheme. This is at a level of 70% of the social minimum, which is hardly enough to live on. Because of this elderly women are over represented among the poor (like lone mothers are).

*The presenters of this shadow report request that CEDAW should consider urging the Dutch government to develop a general compensation scheme for damage done to the pension rights of women as a result of past discrimination and to improve the income position of elderly women who have no pension rights of their own.*

### **10.13 The weakening of the position of widows**

The abolition of the social income protection for widows (the General Widows and Orphans Act) and the implementation of the new 1996 Surviving Dependents Act (SDA) is presented

by the government in the Second Report (p. 75) as a way of improving the (formal) equal treatment of women and men. In practice, this new legislation seriously compromises the rights of women who have been widowed. Particularly older widows, who have spent years bringing up children, are finding themselves in a weaker position because their benefit now depends on their income. As soon as they have any income out of labour or a social security benefit they only receive the basic amount of benefit from the SDA. Often men do have an adequate income in addition to their SDA benefit, as women do not. Hence, this act worsens the position of widows; this is not in the spirit of the Women's Convention which requires an improvement of the position of women. The government has not applied a gender impact assessment in the process of enacting the new law. At this moment (autumn 2000) an evaluation of the SDA is taking place. We do not know whether in this evaluation gender aspects are taken into consideration or not. Do widows have a lower average income (then widowers) as the result of the SDA?

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government why there has been no Gender Impact Assessment (GIA) and what the results of evaluation of the effects of the Surviving Dependents Act on the position of widows are.*

#### **10.14 The obligation of lone mothers with small children to find work**

The amendment of the Social Assistance Act in 1996 involved a heated debate about the issue as to whether mothers with small children who are on social benefits should be obliged to find paid work (the Second Report, pp. 75 and 76). Pressure from the Lower House resulted in a temporary exemption until the youngest child reaches the age of five. There are currently important developments in this area but these are not mentioned in the Second or Third Report. The State Secretary of the emancipation policy has announced that this exception will soon no longer apply because of recent plans to improve the possibility of combining work with care. Women with small children may then also be forced to take paid part-time work. In the Third Report the government describes the measures it has taken to stimulate participation in paid labour by lone parents. (Third Report, p. 104.) This involves the extension of the child care facilities for this group, but not other programs like job training facilities.

Although the presenters of this shadow report understand the importance of preventing women who are on social benefits from being absent from the jobs market for too long because this decreases their chances of finding paid work in the future, they are not convinced that this problem should be solved by taking measures negatively affecting benefit claimants and their children. Once again this measure propagates a stigmatised and damaging image of these women and suggests they want to take care of children at society's expense. It is more important to take measures affecting the social security departments so that they can act in a supportive and facilitating way. These departments should receive more resources and other possibilities from central government so that they can supervise women, who are able and prepared to combine work with care, in entering supplementary training or paid work. In this case, sufficient and affordable day care centres must be made available to these women, not only during the period that they are claiming benefit but also once they are working. Also the social services should convince themselves that the woman involved is able to combine paid work and caring in the concrete case at hand, before imposing a duty to accept a paid job. No evaluation has taken place, as far as we know, of the question whether the measures taken until now really have affected the income position and the labour market position of lone mothers in a positive way.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government to indicate how the local social security departments have helped women with children above the age of five to return to the jobs market since the implementation of the new Social Assistance Act in 1996. What are the results of this policy? If the exemption of women with children under the age of five is abolished, how will the city councils' resources and other possibilities be substantially extended so as to support these women?*

### **10.15 No overtime allowances for part-time workers**

Finally the presenters of this shadow report point to the fact that the government also formulates legislation that still directly reflects stereotyped ideas of the various roles of men and women and is therefore contravening the Convention's third sub-aim: to combat the dominant gender ideology. An example of this (which is mentioned in the Second Report on p. 73) is the legislation for the equal treatment of part-time workers: the Equal Treatment Working Hours Act. In this legislation, the government (as a consequence of the jurisprudence of the European Court of Justice) has explicitly determined that prohibiting discrimination on the grounds of working hours does not affect the granting of allowances in connection with overtime. This means that a part-time worker who works for longer than the agreed hours is not eligible for an overtime allowance whereas a full-time worker is eligible. Also they do not get extra benefits for these extra hours, like paid holidays, contributions to their pension schemes, etc. Because most part-time workers are still women, it is therefore especially women who suffer the adverse effects of this distinction. Here, the government (silently) assumes that an extra work load from the employer only exists once full-time hours have been exceeded and that this exclusively justifies an overtime allowance. Consequently, the government is ignoring the ongoing division of roles between men and women that is at the root of the fact that it is particularly women who work part time; it reflects the dominant idea that only full-timers (in other words: men) are 'real' employees who deserve full protection. Alongside part-time work, these women are generally also responsible for care tasks so that forced overtime also involves an extra work load. However, this is not recognised as a factor for which the employer should pay an extra allowance on top of a salary.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government how it checks the development of new legislation in advance as to whether stereotyped ideas concerning the role of women (and men) continue to hold sway and have possibly influenced the formulation of this legislation. Does the government have the necessary expertise (in all the relevant departments) to undertake this assessment? Does the government intend to take measures to ensure that a part-time worker receives an allowance for overtime that is equal to the overtime allowance paid to a full-time worker?*

## **Chapter 11 Article 12: Health and health care**

### **11.1 General remarks**

The contents of both the Second and the Third Report on this subject are fragmentary and not systematic from the perspective of the text of article 12 of the Convention, the Reporting Guidelines and General Recommendations 14, 18 and 24. This makes it also difficult to write a coherent shadow report on this matter. Important aspects are missing. The government speaks of healthcare only, not on the subject of health itself. There is hardly any mention of the subject of pregnancy and motherhood (paragraph 2 of article 12). Important discussions

being held in the period 1994-2000 are not mentioned, like for instance the discussion on the continuation of general preventive projects on breast cancer and cancer of the cervix. There are also questions about the different effects of waiting lists for men and women, which are not reported by the government in its Reports to CEDAW. A very important discussion is the one about the coming into being of more and more private clinics and clinics which offer special services to the working population. As women still have less money (of their own) and participate less in paid work they have less access to these facilities than men.

Both the Second and the Third Reports fail to describe the general situation of the health care system. As a result of serious cuts in the budgets over more than two decades this sector has to cope with very poor working conditions. Hospitals and nursing homes have a restricted budget for new buildings, repairing old buildings, for medical equipment and for paying their staff. The result is a shortage of personnel, long waiting lists, etc. This affects both women as workers as women as patients. For example, for elderly women cutting the budgets means that they might have to wait for knee- or hip operations for a period of between 6 months and a year. A place in a nursing home is very difficult to obtain. This often means that (mostly female) relatives or neighbours have to provide unpaid care for these elderly people.

As health care traditionally is a sector where many women work (like in teaching) the budgetary problems especially effect the position of female workers in this sector. This not only asks for action in the sphere of more resources (money) for health care facilities, but also in the sphere of a rebuilding the image of the medical profession. Also with respect to the vertical job segregation in this profession the governmental Reports to CEDAW fail to mention the existence of a very solid glass ceiling. Women are over represented as secretaries and nurses, under represented in medical and managerial staff and in the boards of directors.

*he presenters of this shadow report request that CEDAW should consider asking the Dutch government to present a more extensive and coherent report on the situation of women in health and health care, including a report on the gender-specific effects of the troublesome budgetary situation of this sector.*

## **11.2 The report on the implementation of Article 12 of the Women's Convention**

The Second Report includes in-depth coverage of the Health Report which is a part of the First National Report and is also included in the Second Report as a summary in English. Although the Health Report was published in 1996, the government has still failed to formulate adequate answers to its main recommendations.

*The presenters of this shadow report request that CEDAW should consider urging the Dutch government to implement the most important recommendations of the Health Report (see Second Report, p. 51), especially those concerning the application of a Gender Impact Assessment with respect to all policy plans that might affect women with respect to health and health care, the implementation of the norms of the Women's Convention and banishing of existing forms of (indirect) discrimination of women.*

## **11.3 Care for women who have been the victims of sexual violence**

In the Second and the Third Reports, the government does not specifically focus on psychological and medical care for women who are/ have been the victims of sexual and/or domestic violence. Nor does it discuss the provision of special protective shelter for these

women. The care and shelter available to the victims of abuse is completely inadequate in the Netherlands. Its capacity is entirely insufficient (more than 2/3 of all women who request shelter have to be turned away). Bearing in mind the scale of violence against women in relationships, extra efforts are needed so as to be able to provide basic help and security to this group of women. Also more attention should be paid to prevention of violence against women, as well as to effective programs aimed at the offenders.

*The presenters of this shadow report request that CEDAW should consider urging the Dutch government to provide adequate health care for women who have been the victims of sexual violence, and that waiting lists and refusals must be kept to a minimum.*

#### **11.4 Gender specific health (care)**

In the Third Report the government describes its efforts in this respect in great length. In March 1999 a Steering Group on Women and Health Care issued a report. In response to that the Minister of Health wrote a letter to Parliament in which she announced a number of measures. One year later not all of these measures have been implemented. So, for example, the Task Force Gender and Ethnicity that should integrate these aspects in the general policy of the Ministry of Health has as yet not been installed. The Steering Group has terminated its activities, but no other central committee or group that could advise the Minister on this subject has taken its place.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government why the measures announced by the Minister of Health in 1999 as yet have not been implemented and when the government intends to do so.*

#### **11.5 The consequences of the Linkage Act for the right of illegal women to health care**

In this shadow report we have pointed out that the government in its Reports to CEDAW has given no specific attention to the infringement of the rights of women under the Convention as a consequence of the Linkage Act. For further information, see paragraph 8.8.

#### **11.6 Health care for older women and black, migrant and refugee women**

In terms of health care for older women and black, migrant and refugee women there are various points that deserve special attention:

*The exclusion of old people and women from clinical trials.* Research has shown that both old people and women are frequently under-represented in clinical trials and other forms of medical research with human subjects. This means that the treatment of older women has to be mainly based on the data of younger male patients. The consequence of this is that treating older women is often a matter of trial and error in terms of the effectiveness of particular medical interventions.

Older women are more frequently confronted with health problems and are more dependent on health care provisions. Women are particularly adversely affected by short-comings in the health care sector. Old people, single people and people with low incomes form particularly vulnerable categories in health care. Although women have a higher life expectancy than men, relatively speaking they also experience more years of ill health. This in turn means that older women are more likely to need health care provisions. Short-comings in the health care sector, such as waiting lists for home care, have a particularly adverse effect on older women.

Research shows that older people have the same incidence of psychological problems as all other age groups. However, only a fraction of these older people receive help; this can be due to the fact that carers frequently do not recognise the psychological problems of older people and tend to think that these problems are just 'a part of getting older'.

*The priority treatment of sick employees causes indirect discrimination.* For several years now employers have been looking for ways of providing their sick employees with priority medical care. This in turn threatens to create a two-tier health care system which is divided between the employed and the unemployed. Moreover, giving priority to sick employees also causes indirect discrimination: women are less frequently in paid employment than men and are therefore ineligible for the extra care provided for sick employees. Although the Lower House has been constantly critical of the priority treatment given to sick employees, in practice it seems that the government is turning a blind eye to the development of this extra care.

*The treatment of old people and BMR-women.* Both old people and women and BMR-women are frequently unhappy with the way in which they are treated by medical staff. They feel that they are not taken seriously. What is more, older women suffer from this treatment on two counts.

Older black, migrant and refugee women are particularly vulnerable for all the reasons mentioned above, and they are also less likely to be involved in clinical trials. In addition, they are more liable to suffer from ill health than older women who were born in the Netherlands. Women from minorities more frequently belong to the unemployed category and are therefore less likely to be eligible for the extra care that is provided for sick employees. Finally, they are more prone to experience communication problems and negative treatment in the health care sector.

The policy of the government concerning older women and health described in the Third Report comes down to issuing an 'information campaign' called 'Growing Old my Way'. In no way are the above mentioned problems being dealt with in this campaign.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government whether it is planning to take additional measures to improve the health of older women and of (older) black, migrant and refugee women and to improve the accessibility and quality of health care provisions for these women.*

## **Chapter 12 Article 14: Women in rural areas and women who work in family businesses**

### **12.1 General remarks**

The titles of the respective Chapters in the Second and Third Reports are: Rural Women (Ch. 11) and Women in Agriculture (Ch. 10.) Following General Recommendation 16 in which CEDAW extends the scope of article 14 to 'unpaid women working in family businesses' the situation of women in rural areas and women who work in family businesses in general has to be examined. The situation of the latter group of women is also not dealt with in the governments reports concerning articles 11 and 13 of the Convention. As a result of this we do not have a complete picture of the situation of these women and the problems they encounter. Therefore our comments on this issue will necessarily be fragmentary.

With respect to the position of rural women the government does not indicate at all what its policies on the third level of action (to combat gender stereotypes or 'cultural change') are. The presenters of this shadow report are of the opinion that also in the agricultural sector the unequal position of men and women can partly be traced back to traditional views concerning the respective 'tasks' of males and females concerning paid work and caring activities. As far as the government undertakes action in this respect these actions are directed at women only. For example the pilots within the project concerning the 'Land-use planning in rural areas' present this subjects as 'women's affairs'. This clearly reflects the traditional view that women are (behaving) more responsibly in matters of care than men. A plan of action, directed at both men and women, in that respect should therefore be developed in close contact with the women's organizations active in this field.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government to present an adequate picture of the situation of unpaid women working in family businesses in the next Report to CEDAW from the Netherlands and to ask the government to develop a plan of action to combat gender stereotypes in the agricultural sector in close contact with the women's organizations active in this field.*

## **12.2 Economic independence**

Wives who work in the business of their husbands ('assisting wives') often are not economically independent because of the fact that they do not get paid for their work. (Third Report, p. 125.) The government indicates that economic independence is one of the central goals of its policies towards these women. However, in this part of its Report it does not explain how it plans to actually reach this goal. In General Recommendation 16 CEDAW recommends to take the necessary steps to guarantee payment, social security and social benefits. From that perspective it is very meagre just to announce, as the Dutch government does, that female members of the family often do not get paid for their work. No concrete measures are announced. The government declares that women working in agriculture have a different position concerning their labour market participation than other rural women. (Third Report, p. 125.) We doubt that this is true. More and more of these women seek (and find) paid work in the agricultural business of their partner, in an ancillary industry or outside the business of their partner. The availability of childcare is the same (equally bad!) for all women in rural areas. However, it is possible that, as a consequence of the bad financial situation in the agricultural sector (very low profits), childcare is more difficult to obtain for women working in this sector.

Under the heading of 'improving the position of women' two research projects are mentioned in the Third Report. One of them, concerning the wives of fishermen, contains two concrete recommendations concerning which the government does not inform CEDAW if and how these will be carried out. The second research study mentioned by the government was wound up in June 2000. The conclusion of this report is that women in the agricultural sector increasingly have an income of their own, but they are often not in the position to gain full independence in financial and social security affairs. The real estate often is in the name of the husband or partner, although women are forced to co-sign mortgage contracts. The report also contains a number of recommendations to inform these women in a better way about their rights. The presenters of this shadow report are of the opinion that information campaigns, however useful and necessary, are not sufficient to empower women who do not get paid for their work. A comprehensive policy plan is necessary, also concerning the issues mentioned

below (social security rights, participation etc.). We recommend that the results of monitoring reports about poverty in agricultural families will be included in this policy plan.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government to present a plan of action to improve the economic independence of women working in the business of their husband or partner and to combat against poverty of women working in this sector.*

### **12.3 Social Security**

Especially the Invalidity Insurance Act for Self Employed Persons (WAZ), mentioned in the Second Report (pp. 75 and 99), is problematic for women working (independently or with their husband) in an agricultural enterprise or working unpaid in their husband's business elsewhere. If this business has no profit (in fiscal terms) or if the profits are too low and in a situation where the woman combines working at her partners business with part-time paid work elsewhere she will not get payments from this social security provision in case of illness or pregnancy. With this the government does not fulfil the obligation mentioned in article 14 par. 2 sub c of the Women's Convention. In case of pregnancy this also contravenes the obligations under article 12 of the Convention. Apart from the legal barriers mentioned above a report by women's organisations in the agricultural sector have brought to light a number of shortcomings in the defective way the WAZ is executed by the administration. For many women the payments are too low to finance a replacement during pregnancy or maternity leave.

*The presenters of this shadow report request that CEDAW should consider urging the Dutch government to evaluate the WAZ with respect to legal and practical problems it offers for self employed women and women assisting their husbands to gain full and adequate sickness, pregnancy and maternity benefits.*

### **12.4 Women on committees and in advisory bodies**

The government acknowledges in the Third Report that the percentage of women representatives in all kind of official administrative and advisory bodies in the agricultural sector is still too low. The presenters of this shadow report are of the opinion that the low participation of women is not only due to the unwillingness of women or to the fact that they are not informed or trained but also to the unwillingness of certain men (who are in power now) to abstain from their dominant position in these boards. Even when women experts are candidates they often are not appointed by 'the old boys network'. However, the actions taken by the government to improve this situation are solely directed at women, not at men. There is no legal obligation to meet quota, nor a system of sanctions when these are not met.

*The presenters of this shadow report request that CEDAW should consider asking the Dutch government to present a more comprehensive plan of action to improve the participation of women in administrative and advisory boards in the agricultural sector.*

## **Chapter 13 Article 16: Personal and family rights**

### **13.1 General remarks**

The presenters of this shadow report do not at all share the opinion of the Dutch government (expressly stated in the Third Report, p. 130) that 'the law of persons and family law now accords equal treatment to men and women'. We most strongly oppose this statement. On the level of formal equality there still are instances of direct discrimination of women (see below: the law of names and the nobility law). But also on the level of substantive equality one can state that through the formal equal rights approach in the sphere of family law a worsening of the position of women is taking place. It is mainly men (fathers) who profit from that approach: they gain new rights, especially with relation to their children. These formal equal rights do not take the different position of fathers and mothers concerning their different involvement in unpaid care into consideration. Women thus often end up with less rights than they had before.

*The presenters of this shadow report request CEDAW to put questions to the Dutch government about the substantive impact of a formal equal treatment approach, which the factual differences between fathers and mothers with respect to care, on the position of women in family law matters.*

### **13.2 The position of women of non-Dutch nationality in family law**

That the equal treatment of men and women in the sphere of family law is completed is also not true when one takes the position of women of non-Dutch nationality into consideration. According to International Private Law rules often national laws (often Islamic laws) are applied to these women in family law issues. Especially with relation to divorce these laws sometimes are less favourable than Dutch family law, sometimes even are in flagrant contradiction to the rights described in the Women's Convention. This subject is not mentioned at all in the Second or Third Report and should get adequate attention from the government in the near future.

A non-Dutch parent can have a residence permit because of family life with a (Dutch) child in the Netherlands. Because of the requirements of immigration law the possibilities for these parents to have a family life with their child are much more limited than in family law. It may be that a parent has visitation rights or custody over a Dutch child, but cannot stay in the Netherlands. This makes a foreign parents dependant of the other, former spouse.

A non-Dutch woman might stay in the Netherlands because of the visiting right of the (Dutch) father with respect to her child. This turns the woman from dependant spouse into a dependant caretaker. In cases where such visiting might harm the child (e.g. because of violence or incest) this may force the woman to a choice: expulsion from the Netherlands or harmful visits of the child to its father.

Non-Dutch parents have to meet with more severe conditions because of immigration law, than they have to meet in family law. It means that they have no time to use possibilities for mediation about the arrangements for the child in cases of divorce. The European Commission on Human Rights has condemned Dutch policy on this matter. The non-Dutch father after divorce might need a right to visit his child in order to gain the right to stay in the Netherlands. This makes him a dependant of the (Dutch) residing mother, but also means that the mother stays under pressure to make the visits of the child to the father possible, because of the residence of her former spouse. Even when the family judge has granted a visiting right, residence in the Netherlands is not certain.

*The presenters of this shadow report request that CEDAW should put questions to the Dutch government about how it evaluates the position of women of non-Dutch nationality in family law matters and how it evaluates the position of Dutch women with a non-Dutch (ex) partner who share responsibility for a child.*

### **13.3 Unequal treatment under the Law of names**

There is a discrepancy between the conclusion of the Groenman Report and the Second Report in terms of the Law of names. In the Second Report, the government makes it seem as if this area of legislation has now been brought into accordance with the criteria of the Women's Convention (p. 102). The Groenman Commission has explicitly indicated to the government that women still do not have equal rights vis-à-vis the legislation concerning family names or surnames. The Commission argues that the new legislation continues to contravene the Convention. This act stipulates that, if parents cannot reach an agreement, the father can ultimately decide on which surname the child will be given. So the woman must still depend on the man for the allocation of the family name, while the man does not have to depend on the woman. Another problem is that, if the parents decide on the woman's name, they have to go to the registry office together within three days after birth to fulfil the formalities. This is not necessary when they decide on the man's name. In that case the man can go on his own. When the mother's medical condition is bad (e.g. as a consequence of a caesarean) the child will have to be named after the father because she cannot meet this requirement.

The new law thus explicitly contravenes the principle of equality on which the Convention is based. If the parents fail to reach an agreement, true equal treatment would at least mean that their differences could be brought before a court of law (the Groenman Report, p. 112). Also the requirement to come together to the registry office should be abolished. In the Cabinet's Reaction, the government states that it had not reconsidered the Bill because it had set the matter aside following the view of the Lower House that there was no question here of contravening the Convention. However, the government has announced that 'at some point in the near future' it will conduct an evaluation of the effects of the new legislation covering the parents' choice of surname (the Cabinet's Reaction, p. 38).

*The presenters of this shadow report request that CEDAW should state explicitly whether the current Dutch law of names is in accordance with the Convention's demand for equality.*

### **13.4 Unequal treatment under the nobility law**

The presenters of this shadow report would also like to draw CEDAW's attention to the fact that an account of the developments in the nobility law has not been mentioned in the Second Report. In the Netherlands, women cannot pass on their titles to their descendants. The Groenman Commission has concluded that this point contravenes the Convention (the Groenman Rapport, p. 54). The government is currently of the opinion that this concerns an 'historical institution' that should be beyond the range of the principle of equal treatment, and has also excluded the hereditary transfer of titles through the female line in the new Nobility Act.

*The presenters of this shadow report request that CEDAW should state explicitly whether the current Dutch Nobility Act is in accordance with the Convention's demand for equality.*

## ANNEX

**The NGOs who contributed to and/or subscribe this shadow-report on behalf of the 25th session of the UN Committee for the Elimination of all forms of Discrimination Against Women (CEDAW) concerning the Second and Third report of The Netherlands.**

- Amnesty International - Dutch Section
- CDA Vrouwenberaad (Christian Democratic Political Women's Organization)
- Clara Wichmann Instituut
- E-Quality, Experts in Gender en Etniciteit (E-Quality, Experts on Gender and Ethnicity)
- FNV Vrouwensecretariaat (Women's Department of the Netherlands Trade Union Confederation FNV)
- Humanistisch Overleg Mensenrechten (Humanist Working Group on Human Rights)
- Inspraak Orgaan Turken in Nederland (Consultative Council for the Turkish People in The Netherlands)
- Komitee Zelfstandig Verblijfsrecht Migrantenvrouwen (Committee for an Independent Right of Residence for Migrant Women)
- Landelijk Bureau Leeftijdsdiscriminatie (National Age Discrimination Office)
- Marokkaanse Vrouwen Vereniging Nederland (Association of Moroccan Women in The Netherlands)
- Nederlandse Vereniging van Vrouwen met Hogere Opleiding, VVAO (Dutch Association of University Women)
- Nederlandse Vereniging voor Vrouwenbelangen, Vrouwenarbeid en Gelijk Staatsburgerschap (Dutch Association of Women's Interests, Women's Labour and Equal Citizenship)
- Nederlandse Vrouwenraad (Netherlands Council of Women)
- Platform Actieplan 2000 (Platform for the Implementation of the Beijing Platform for Action)
- Tiye international (Network of Dutch Organizations of Black, Migrant and Refugee Women)
- TransAct (Dutch Centre for Gender Issues in Health Care and Prevention of Sexual Violence)
- Vereniging van Vrouwen uit Turkije in Amsterdam (Association of Turkish Women in Amsterdam)
- Vrouwenpartij voor feministische politiek (Women's Party for Feminist Politics)
- Vrouwen Alliantie (Dutch Women's Alliance for Economic Independence and Redistribution of Paid and Unpaid Work)
- WEMOS Gezondheid Wereldwijd (WEMOS Health for All)
- Werkgroep Feminisme en Internationaal Recht (International Law Association's Working Group on Feminism and International Law (Netherlands))
- Werkgroep Religieuzen tegen Vrouwenhandel (Committee of religious women against trafficking in women)
- Werkgroep Vrouwen in de Landbouw (Working Group of Agricultural Women)
- WOUW Vlechtwerk (Wouw Weave Work - Network of Women over Fifty in The Netherlands).