

REFERENCE: AA/Follow-up/Netherlands/53

26 November 2012

Excellency,

In my capacity as Rapporteur for Follow-up on Concluding Observations of the Committee on the Elimination of Discrimination against Women (CEDAW), I have the honour to refer to the examination of the combined fourth and fifth periodic report of the Netherlands at the Committee's forty-fifth session, held in January-February 2010. At the end of that session, the Committee's concluding observations were transmitted to your Permanent Mission (CEDAW/C/NDL/CO/5). You may recall that in the concluding observations, the Committee requested the Netherlands to provide, within two year, further information regarding the specific areas of concern identified by the Committee in paragraphs 27 and 29 of the concluding observations.

The Committee welcomes the follow-up report received on 15 March 2012, although with a two-month delay, under the CEDAW follow-up procedure (CEDAW/C/NDL/CO/5/Add.1). At its fifty-third session, held in October 2012 in Geneva, the Committee examined this follow-up report and adopted the following assessment.

Regarding the recommendation made **in paragraph 27** of the Concluding Observations urging the Netherlands Antilles and Aruba “to promptly enact legislation providing for temporary restraining orders to be imposed on perpetrators of domestic violence”:

- a) In Bonaire, St Eustatius and Saba, as well as in Aruba, the State party failed to take actions to enact the Temporary Domestic Exclusion Order Act. The Committee considers that the recommendation has not been implemented in these islands;
- b) In Curaçao, the 2011 revised Criminal Code provides that the court may impose:
 - a) a barring order when specific types of violence are committed on offender's mother, father, spouse or partner and child, and
 - b) a restraining order for other forms of assault.The Committee considers that the recommendation has been implemented in this island; and
- c) In St Maarten, the law makes it possible to impose a temporary restraining order on suspects/defendants in domestic violence cases. The Committee considers that the recommendation has been implemented in this island.

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Regarding the recommendation for Aruba “to provide training to the police, law enforcement personnel and health personnel so that they may properly investigate and deal with domestic violence”: While indicating that domestic violence will be part of the modules about “crime” and “public order and social care” at the police academy, the State party failed to provide information on specific training focused on domestic violence. In addition, the State party failed to indicate whether training on domestic violence has been carried out for other law enforcement officers or health personnel. The Committee considers that the recommendation has **been partially implemented**.

Regarding the recommendation “to ensure that the specificities of domestic violence targeting women be fully taken into consideration in the formulation of the new plan of action against domestic violence starting in 2011”: The State party indicated many actions taken or envisaged to combat domestic violence and explained that it will draw up a national plan of action on violence within the domestic circle in the first half of 2012. However, it failed to provide information on the steps taken to adopt the new plan of action against domestic violence initially expected to be launched in 2011. The Committee **did not receive sufficient information** to assess whether the recommendation has been implemented.

Concerning its recommendation “to ensure without any further delay that free legal aid is provided to all victims of domestic violence”: While the Victims’ Status Act was enacted in 2011 and victims of domestic violence have diverse possibilities to benefit from free legal aid, some conditions remain for the victims to benefit from such assistance. The Committee considers that the recommendation has **been partially implemented**.

Regarding the recommendation “not to use the joint plan for parenthood as a legal precondition for starting divorce proceedings and in no case to impose it on women victims of domestic violence”: The State party indicated that the Shared Parenting and Responsible Divorce and Separation Act of 2008 includes a get-out clause and the Explanatory Memorandum explicitly states that domestic violence can be considered a situation in which it is impossible to draw up a joint parenting plan. The State party added that the court ultimately decides whether it was impossible to prepare a parenting plan and if divorce can be pronounced without such a plan. The State party further stated that the Act will be evaluated in 2012. However, the State party failed to provide information on the effective implementation of the Explanatory memorandum, on the number of women who benefited from this memorandum, and on the conditions requested, in the case law, for its application. The Committee **did not receive sufficient information** to assess whether the recommendation had been implemented.

The Committee recommends that the State party provide, **by July 2013**, additional information on actions taken to:

- 1) Enact the Temporary Domestic Exclusion Order Act in Bonaire, St Eustatius and Saba and the Country Ordinance on Temporary Domestic Exclusion Orders in Aruba;
- 2) Provide specific training focused on domestic violence for the police, law enforcement and health personnel, so that they may properly investigate and deal with domestic violence;
- 3) Draw up and launch without delay the new plan of action against domestic violence and ensure that the specificities of domestic violence targeting women be fully taken into consideration in the plan; and
- 4) Ensure that victims of domestic violence can benefit from free legal aid;

Please also provide information on: a) the outcome of the evaluation of the Shared Parenting and Responsible Divorce and Separation Act of 2008, scheduled to be undertaken in 2012, b) the number of women victim of domestic violence who benefited from the get-out-clause of the Act, and c) on the conditions requested, in the case law, for its application.

Regarding the recommendation made **in paragraph 29** of the Concluding Observations for the Netherlands Antilles “to adopt without delay legislation criminalizing all forms of human trafficking”:

- a) Human trafficking is explicitly prohibited in all its forms in Bonaire, St Eustatius and Saba. The Committee considers that the recommendation **has been implemented** in these islands.
- b) The Curaçao’s Criminal Code criminalizes sexual exploitation as well as forced labour, slavery and organ removal. The Committee considers that the recommendation **has been implemented** in this island.
- c) While a draft criminal code has been drawn up in St Maarten in a view to broaden criminal prosecution for trafficking in women, this draft law has not yet been adopted. The Committee considers that the recommendation has **been partially implemented** in this island.

Concerning the recommendation “to ensure that relevant NGOs are fully integrated into the membership of the anti-trafficking task force”: The State party indicated that the NGO “Trafficking in Human Beings Coordination Centre (Comensha)”, which provides registration of victims and organizes and coordinates the provision of care for victims, has been granted official status in the task force. However, the State party failed to integrate other relevant NGOs in the anti-trafficking task force, in particular those providing direct assistance and support to victims. The Committee considers that the recommendation has been **partially implemented**.

Regarding the recommendation “to improve the identification of victims of trafficking by associating relevant NGOs with the process, and to ensure that trafficked women are not, in any circumstances, held in immigration detention or other forms of custody”: The State party indicated that, on a number of occasions, NGOs have contributed to the identification of victims, for instance by attending interventions by the law enforcement officers at the latter’s request in order to coordinate the necessary shelter arrangements or to help communicate with the victims of a different cultural background. However, the State party indicated that, while NGOs may contribute to identification of victims, they cannot be included in this process on a systematic basis because of the confidentiality and sensitivity of investigations in trafficking. In addition, the Committee was informed that NGOs are not authorized to apply for the reflection period on behalf of the victim and that accredited NGOs cannot reach all victims in detention as they only have limited access to detention centres and are dependent on signals of trafficking by the staff of detention centres. The Committee considers that the recommendation has **not been implemented**.

Concerning the recommendation “to comply with its obligations to provide protection to all victims of trafficking regardless of their willingness or ability to cooperate in legal proceedings”: The State party indicated that, since January 2011, victims of human trafficking who are unable or unwilling to cooperate in the proceedings because of serious threats from the trafficker or physical/mental disabilities may obtain a residence permit. It further stated that, when they do not cooperate for other reasons, they may apply for a permit on humanitarian grounds and during their application, they have access to safe accommodation, financial support and legal aid. While noting the issuance of the new rule on 1st January 2011 according to which victims of trafficking may obtain a residence permit, the granting of protection does not appear to apply automatically and effectively to all victims of trafficking regardless of their willingness or ability to cooperate in legal proceedings. In addition, the Committee received information that the residence permit on humanitarian grounds only applies to victims who have previously been granted a temporary residence



permit on ground of their cooperation with the police. The Committee considers that the recommendation has **been partially implemented**.

The Committee recommends that the State party provide, **by July 2013**, additional information on actions taken to:

- 1) Adopt the draft Criminal Code in St Maarten and ensure that it criminalizes all forms of human trafficking;
- 2) Integrate additional relevant NGOs in the anti-trafficking task force;
- 3) Systematically associate relevant NGOs with the identification of victims of trafficking, including by authorizing the NGOs to apply for the reflection period on behalf of the victim and by extending the NGOs' access to detention centres ; and
- 4) Ensure the effective enforcement of the new rule in force since 1 January 2011 according to which victims of trafficking who are not able or willing to cooperate with the authorities may be entitled to a residence permit at certain conditions; and extend its application by ensuring that the granting of protection unconditionally and effectively applies to all victims of trafficking regardless of their willingness or ability to cooperate in legal proceedings.

The Committee looks forward to pursuing its constructive dialogue with the authorities of the Netherlands on the implementation of the Convention.

Please accept, Excellency, the assurances of my highest consideration.

Yours sincerely,

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Rapporteur on follow-up
Committee on the Elimination of Discrimination against Women