

Expertmeeting Vrouwen, Verblijfsrecht en Internationale Verdragen Amsterdam, 28 oktober 2019

Paragrafen die afhankelijk verblijfsrecht direct aankaarten in schaduwrapportages:

1. CEDAW 2016 Pag. 2
[Unfinished Business- Women's Rights in The Netherlands](#)
2. GREVIO 2018 (Istanbul verdrag) Pag. 5
[Joining Forces to Break the Circle of Violence Against Women](#)

1. CEDAW 2016, eerste schaduwrapportage

EQUAL RIGHTS OF OBTAINING, CHANGING OR RETAINING A NATIONALITY (ART. 9) & EQUAL RIGHTS IN RESPECT OF MARRIAGE AND FAMILY RELATIONSHIPS (ART. 16)

Extension of the period of the dependant residence permit makes women more vulnerable

33. The government has increased the duration of the dependant residence permit of migrant women from three to five years. This change disproportionately affects women, since 75% of women and 25% of men apply for a residence permit based on family formation or reunification.⁷⁷ The extension of the period of dependency negatively impacts the emancipation and integration process of migrant and refugee women (who arrive after their partner was granted residency), restricts their autonomy and increases the risk of domestic violence and abuse of power. In addition, also Dutch women with a migrant partner whose residence permit is dependent on them are affected, as they cannot separate from their partner for five years (instead of three) without exposing him or her to deportation. Yet, the government does not make any reference in its report to this change of law and its impact on in particular migrant women.

The NGOs suggest the Committee to ask the government to provide information about the reasons for extending the duration of the dependent residence permit from three to five years, as well as about the gender impact thereof, respectively whether it has it has commissioned any research into the social and psychological effects on both migrant and Dutch women.

Obtaining continued (independent) residency in the case of domestic violence more difficult

34. As an exception, migrant women can apply for a continued (independent) residence permit within the five year period of dependent stay in the case of domestic violence. However, NGOs notice that during the last two years it actually has become more difficult for victims of domestic violence to obtain an independent residence permit. In the past, it was sufficient to demonstrate the domestic violence by means of a statement of a doctor, a social worker or a women's shelter. Currently the Immigration and Naturalisation Service (IND) demands an official statement from the police or the Public Prosecution Services, next to a declaration of the shelter, a doctor or a hospital. They also require the victim to seek refuge in a shelter and in some cases a conviction of the perpetrator is required. The NGOs point out that this approach is not in line with the general policy on domestic violence and the obligations of the Netherlands under CEDAW.

The NGOs suggest the Committee to ask the government to explain the reasons for this change in policy and to provide facts and figures on the number of residence permits granted to migrant women on the basis of domestic violence for the last 5 years.

1. CEDAW 2016, tweede schaduwrapportage

15 INSUFFICIENT ASSISTANCE TO AND PROTECTION OF ABANDONED WOMEN AND GIRLS

Women and girls who are abandoned in their parents' country of origin face major obstacles in returning to the Netherlands. Dutch embassies have been given a central role in facilitating their return, but there are huge variations in attitude and performance. NGOs also report problems regarding embassies' inaccessibility: they are often located at a distance or are completely absent. The EU/Schengen 'sharing' of embassies has not (yet?) proven to have added value in this respect. Other problems reported are insufficient help with arranging tickets and/or the lack of protection while waiting for travel documents. For minor girls who flee (the threat of) a forced marriage, the problems are even worse since, in most cases, embassies will not act without the permission of the parents or a guardian. Many abandoned women are married women with a dependent residence permit, and some embassies only help abandoned women and girls who are fleeing forced marriage. Often embassies do not provide assistance to women married to men with Dutch passports if they themselves do not have the Dutch nationality. If women or girls do manage to return to the Netherlands, they face huge difficulties in finding proper shelter and assistance. Shelters and/or Safe at Home (the municipal portal to women's shelters) make assessments of the risks of recurrent violence, which often leads to denial of shelter due to the limited capacity. The NGOs are of the opinion that all categories of abandoned women and girls who previously lived in the Netherlands are entitled to assistance. They also feel that the government could play a more active role in providing assistance and protection, particularly via: cooperation with women's organisations in the countries of origin; provision of safe accommodation while waiting for consular assistance related to travel documents; arrangement of tickets; and the provision of shelter on return to the Netherlands. They are also of the opinion that, where minors are involved, the rights of the girl-child should weigh more heavily than the rights of the parents and they should be offered protection with or without parental permission.

The NGOs and CSOs suggest that the Committee asks the government for facts and figures regarding abandoned women and girls who request assistance from Dutch embassies. The Committee could also enquire what measures the government is undertaking to address the problems listed above.

28 NEGATIVE IMPACT OF DEPENDENT RESIDENCE PERMIT ON PREVENTION OF VIOLENCE

Prevention and early identification are key elements of the policy to counter domestic violence. Such measures are at odds with the government's recent prolongation of the duration of the dependent residence permit (2012) held by many migrant women and the increase in the burden of proof placed on them when they apply for independent residence permits on grounds of domestic violence (see also Annex para 33 and 34). Although women who encounter domestic violence may apply for an independent permit, the experience of NGOs and CSOs is that, insecurity regarding the outcome and the heavy burden of proof cause women to try and endure the violent situation as long as possible, risking escalation of the violence. This situation has become exacerbated by the extension of the period women must hold a dependent residence permit before applying for an independent one, from three to five years.

The NGOs and CSOs suggest that the Committee asks the government to provide facts and figures on the number of applications it has received for independent residence permits on grounds of domestic violence; the number that were granted; the number rejected; and the grounds on which they were rejected.

29 GENDER-BASED VIOLENCE AS GROUND FOR ASYLUM

In its previous Concluding Observations (CEDAW/C/NLD/CO/5 para 41) the Committee urged the government to adapt its asylum procedures to the needs of female victims of violence. But according to the NGOs and CSOs the government has not implemented the Committee's recommendation. They have

identified several barriers in the asylum procedure that make it difficult to request asylum on grounds of domestic and gender-related violence (...).

The NGOs and CSOs suggest that the Committee should once again urge the government to undertake measures to guarantee gender-sensitive asylum procedures in conformity with UNHCR Guidelines, General Recommendation 31 and 32 and the recent Resolution of the European Parliament on the situation of women refugees and asylum seekers.²³ The NGOs and CSOs also suggest that the Committee asks the government about the number of women who have been granted asylum on the ground of gender-related violence.

63 DISCREPANCY BETWEEN SELF DETERMINATION AND MIGRATION POLICY

The Committee asked the government for information on the gender impact of the changes in its immigration policy, in particular on the impact of the 'integration requirement' on poorly educated, illiterate and semi-literate women (CEDAW/C/NLD/Q/6 para 21). Although the government responds that this is not yet clear, the NGOs and CSOs note that according to recent reports to the Parliament 40% of the migrants who came to the Netherlands in 2013 had not yet passed the 'integration exam'.⁵⁶ Meanwhile, research shows that failure to meet the integration requirement is an important ground for rejecting applications for continued residence and that more applications by women are rejected than those by men.⁵⁷ In addition, since 2013 the responsibility to prepare for the integration exam lies fully with migrants themselves; municipalities are no longer allowed to offer integration courses. If migrants do not pass the exam within three years they are fined and risk withdrawal of their residence permit. The absence of an independent residence permit directly affects the ability of women to stand up for their rights, as well as to defend themselves against gender-related violence, regardless of income and level of education.⁵⁸ Whereas the government refers to the Self Determination Action Plan and its emphasis on the importance of independence and participation of women (CEDAW/C/NLD/Q/6/Add1 para 62), its immigration policy has precisely the opposite effect. An example of this is the extension of the duration of the dependent residence permit in 2012 from three to five years. The NGOs and CSOs consider this to be at odds with the obligations of the State under the Convention and General Recommendation 31.

The NGOs and CSOs suggest that the Committee asks the government what measures it wants to take to bring its immigration policies in concurrence with its Self Determination Action Plan and how it wants to address the gender-discriminatory effects of its immigration policies. The NGOs and CSOs also suggest that the Committee calls on the government to consider returning the duration of the dependent residence permit from five to three years.

2. GREVIO 2018

CHAPTER III – PREVENTION

ART. 12.6 PROMOTE PROGRAMMES AND ACTIVITIES FOR THE EMPOWERMENT OF WOMEN

17. Dependent residence status undermines empowerment and self-determination

In cases of family migration (including refugees who join their partner after several months, usually women), migrants receive a dependent residence permit. The NGOs are concerned that in recent years the conditions to obtain an autonomous residence permit have been increasingly tightened. The minimum period of the dependent residence permit has been raised from three to five years. This period can even be prolonged if the civic integration exam has not yet successfully attained. High fees, up to more than €1,500 for an autonomous permit, hamper women even further in obtaining legal independence. The consequence of the long dependency period is an unequal power relationship between the partners that easily can be misused. Although in theory in cases of violence, an autonomous residence permit can be obtained, it will only be granted if there is proven, and therefore visible, evidence of the violence that took place (see also section 67). NGOs are of the opinion that a dependent residence permit creates a situation where women are, rather than being empowered, more vulnerable to violence, which is contrary to among others art. 12.3. and art. 12.5 of the Convention.

The NGOs recommend carrying out an impact assessment of the influence of the dependent residence permit on women's self-determination, their vulnerability to violence and their decision to leave a violent relationship, and to take measures to remedy possible negative effects.

ART. 15 TRAINING OF PROFESSIONALS

23. Specific expertise needed for effective assistance for migrant and refugee women

Guiding and assisting migrant and refugee women, with or without a (temporary) residence permit, requires a specific combination of expertise and (communication) skills which professionals do not always possess. There is often a lack of awareness and/or knowledge of the consequences of migration law relevant to the position of migrant and refugee women. As a result, its importance is either underestimated (e.g. the proof of violence that is needed to apply for an autonomous residence permit is not collected) or overestimated (e.g. professionals think that victims with an insecure or no migration status are not entitled to support and care).

Professionals often lack (inter)cultural communication skills and are not at ease discussing topics such as sexual violence with their clients, because they automatically assume that the subject is taboo for the women they work with. Moreover, they often lack sufficient knowledge about the different manifestations of violence that migrant and refugee women face and the different approaches that may be appropriate. Not only can this result in ineffective support, but it can also have ramifications for the victim's safety.

The NGOs recommend ensuring that professionals who work with migrant and refugee women regularly receive cultural sensitivity training (given by or with migrant- and refugee women organisations), which includes basic knowledge of the consequences of migration law on their clients' position and the specific implications of discrimination based on gender and ethnicity/nationality.

CHAPTER IV – PROTECTION AND SUPPORT

ART 18: GENERAL OBLIGATIONS

30. Insufficient consular assistance for abandoned women and minors

Women and minors (girls and boys) who have been abandoned in their country of origin face major obstacles in returning to the Netherlands. Although Dutch embassies have been given a central role in facilitating their return, there are huge differences in the support they offer. In addition, they are often located far away or in another country. NGOs also note differences in which victims receive support: e.g. married or not married, minor or adults. Furthermore, it often takes weeks before the Dutch immigration agency has verified the person's right to return, even though, according to Dutch immigration law, the person has the right to start a procedure for a continued residence permit in the Netherlands. This is a hazard for the safety of the abandoned victim who fled home and sought the embassy's help. Minors face the problem of arranging a passport or identification papers in order to leave the country without the consent of their parent(s). A ticket fund can help pay for the ticket to return to the Netherlands, but victims are often not informed about this possibility. The NGOs are wondering why the government was only in a few cases able to bring abandoned women and minors back to the Netherlands.

The NGOs urge the government to take all the necessary steps to improve their consular assistance for abandoned women and girls and to train embassy officers in the concerned countries how to best assist women with their return.

ART 22: SPECIALIST SUPPORT SERVICES

36. Insufficient protection and support for abandoned women and minors

The NGOs commend the measures the Dutch government has taken against the abandonment of women and minors abroad (IV.2.3) but still identify several problems. The LKHA (Dutch advice and support centre on forced marriages and abandonment) has been given a central role in providing support in cases of abandonment or impending abandonment and in facilitating the abandoned person's return. However, they are not tasked to proactively inform potential victims of their rights and the possibilities for protection and support. At the same time the NGOs note that also the Ministry of Foreign Affairs is restrained in proactively distributing information to women and minors about the availability of protection and support in cases of abandonment or a forced marriage abroad (see also section 30). In the NGOs' opinion, too much emphasis is, moreover, being placed on the difficulties to help a victim back to the Netherlands, instead of on what the embassy can do to help.

When women or minors manage to return to the Netherlands, they face huge difficulties in finding appropriate shelter and support. For those who manage to return only after years, it is nearly impossible to find shelter or safe accommodation, an income, protection and legal and other forms of support, even if they have a Dutch passport.

The NGOs recommend that the government play a more proactive role in informing women and minors about their rights and the protection measures available in cases of abandonment. Furthermore, the NGOs recommend the government take all necessary steps to ensure support and shelter for women and minors upon their return.

37. Inadequate protection and services in asylum seekers' centres

Female asylum seekers who are in the process of obtaining refugee status and who become victims of domestic violence are legally excluded from both regular and specialised shelters and support services and only have access to the general, non-specialised shelters and services for asylum seekers. These shelters are often very basic with little provisions and with little privacy. Incidents of domestic violence are not registered as such. Asylum seekers are transferred to other centres on a regular basis, which makes it

difficult, if not impossible, to provide them with adequate and continued care. Moreover, members of staff and volunteers often lack knowledge and expertise on the applicable laws and regulations, on coping with traumatic experiences, cultural sensitivity, and client-centred prevention, care and support. In many cases, staff and volunteers are ill-equipped to talk about sexual violence, or they assume that it is a taboo for the women themselves or even that “the women consider domestic violence an accepted part of their culture.” Furthermore, training is irregular and insufficient (see also section 21).

The NGOs urge the government to take measures to ensure the safety of female refugees within the asylum centres and to ensure that victims have access to adequate protection and support and that staff and volunteers are sufficiently trained to deal with cases of domestic or other gender-based violence within asylum seekers’ centres.

CHAPTER VII – MIGRATION AND ASYLUM

ART. 59.1 RESIDENCE STATUS

68. More obstacles to obtaining autonomous residency in cases domestic violence

As mentioned by the government (VII.1), migrant women who are abused by their partner may apply for an independent residence permit. However, in the NGOs’ experience, the heavy burden of proof and uncertainty about the outcome of an application for continued residence often cause women to try to endure the violence as long as possible, even with the risk that the violence will escalate. This situation has become exacerbated by the increase in the duration of the dependency period, the introduction of the integration exam as a condition for an autonomous residence permit, and the increase in the burden of proof. Since 2012 a declaration from both the police and/or the prosecutor and from the shelter/support service is required (before 2012 it was one or the other). This makes it more difficult for all victims to qualify for an autonomous residence permit, but it is now especially difficult for victims of non-visible (psychological) abuse despite the fact that psychological violence is included in the definition of domestic violence.

Government data indicate (VII.1) that more than 80% of the victims of domestic violence with a dependent residence permit are granted continued residence based on domestic violence. For undocumented victims, this is only 25%. This percentage only concerns women who have applied. In the NGOs experience, there are many more women who are victims of domestic violence, but they are afraid to come forward out of fear of losing their right to stay.

The NGOs recommend that the government investigate what impact the prolongation of the period of dependency and the increase in the burden of proof to qualify for an independent residence permit has had on the duration of violence and the decision of women to leave a violent relationship. The NGOs also recommend that the government automatically provide family migrants an autonomous residence permit after the dependency period has ended.