

CHAPTER 24

THE IMPACT AND EFFECTIVENESS OF STATE REPORTING UNDER THE WOMEN'S CONVENTION THE CASE OF THE NETHERLANDS¹

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1. INTRODUCTION

The Committee on the Elimination of Discrimination Against Women (CEDAW) has already expressed its concern three times with respect to the existence of the reformed political party, SGP, which excluded women from membership until 2006 and still continues to exclude women from being eligible for election.² CEDAW also determined thrice that the Law on Names continues to contravene the basic principle of the Women's Convention regarding equality of men and women.³ It is therefore not surprising that CEDAW concluded in its latest Concluding Observations (COs) that some of the concerns, including those just mentioned, have been insufficiently addressed by the Netherlands.⁴ This warrants the question what the impact of the other COs has been and how the COs are complied with by the Netherlands.

¹ This contribution must be seen as only a partial and limited selection out of a more extensive Ph.D. research that focuses on State reporting under the six main UN human rights treaties (ICCPR, ICESCR, ICRC, ICAT, ICERD and the Women's Convention).

² The second and third report were jointly considered by CEDAW on 6 July 2001, the fourth report on 24 January 2007 and the most recent one on 27 January 2010. Concluding Observations of the Committee on the Elimination of Discrimination Against Women (paras 185-231), A/56/38(SUPP), 20 July 2001, paras 219-220. Concluding comments of the Committee on the Elimination of Discrimination against Women, UN doc. CEDAW/C/NLD/CO/4, 2 February 2007, paras 25-26. Concluding observations of the Committee on the Elimination of Discrimination against Women, UN doc. CEDAW/C/NLD/CO/5, 5 February 2010, para. 10. On the SGP case also see Chapter 8 in this book by Margreet de Boer.

³ CEDAW points in particular to Article 16 (g) of the Women's Convention. The Law on Names provides that, where the parents cannot reach an agreement as to the name of a child, the father has the ultimate decision. COs 2001, A/56/38(SUPP), para. 223-224. UN doc. CEDAW/C/NLD/CO/4, para. 33-34. UN doc. CEDAW/C/NLD/CO/5, para. 10. On the Law on Names also see Chapter 16 in this book by Tilly Draaisma.

⁴ UN doc. CEDAW/C/NLD/CO/5, para. 10. Besides the recommendations to adopt or amend legislation to comply with the Women's Convention with respect to the political party SGP and the Law on Names, CEDAW is also concerned about, among other issues, the low presence of women in high ranking posts, the persistence of gender-role stereotypes, the fact that the policy on violence against women is couched in gender-neutral wording, disadvantages women face on the labour market and the insufficient number of places of childcare.

In this Chapter it will be argued that the COs for the Netherlands have hardly had any impact⁵ and that they are ineffective in terms of securing compliance.⁶ Section 2 will outline the impact at the domestic level and the attention that has been paid by domestic actors, such as Parliament, the media and courts, next to discussing the visibility of the Women's Convention. The other sections will illustrate this conclusion by highlighting several important factors and reasons for the scarce attention paid at the domestic level and the fact that COs hardly ever lead to policy changes that are directly the result of CEDAW's recommendations. That is to say, section 3 focuses on the State level and the attitude of the Government (officials) towards the process of State reporting, whereas section 4 examines the factors related to CEDAW.⁷ Section 5 concentrates on the divergence of views between CEDAW and the Dutch Government about the nature of the obligations under the Women's Convention.

2. IMPACT AND ATTENTION AT THE DOMESTIC LEVEL

This section will demonstrate that COs are hardly discussed, invoked or referred to in Parliament.⁸ At the same time, COs are largely absent in legal practice and are hardly ever picked up by the press.

2.1. GOVERNMENTAL INFORMING OF PARLIAMENT

Parliament is kept informed about the process of State reporting, although it is not engaged in the drawing up of the report itself.⁹ This means that the periodic State reports, the List of

⁵ Impact is understood as the extent to which COs are picked up, discussed and referred to by domestic actors, such as the executive Government, Parliament, NGOs and the media.

⁶ With effectiveness I mean a change in policy and/or legislation that was made as a consequence of and with the intention to comply with those COs. The latter definition makes clear that the focus in this Chapter is on a causal relationship between the measures taken by the authorities and those recommended by CEDAW.

⁷ In order to establish those attitudes and perceptions twelve interviews were held with (former) Government officials from five different Ministries involved in the process of State reporting. In order to protect the anonymity of my interview subjects, the names or identities of those Government officials will not be disclosed. Given the limited number of pages, the results of the interviews will mainly be discussed in general terms. References with a randomly generated series of numbers that were assigned to the interview are only used when necessary.

⁸ Parliament refers to both the First and the Second Chamber.

⁹ The preparation of the periodic State report has so far been coordinated by the Directorate Emancipation, part of the Ministry of Social Affairs and Employment until February 2007 and the Ministry of Education, Culture and Science. Parliament and NGOs are not engaged in the drawing up of the report itself or the responses to the List of Issues. NGOs write, separately to the State report, a shadow report. E-Quality published the shadow report to the second and third State report and the fourth and fifth shadow report were written on behalf of the Dutch CEDAW-Network. The Dutch section of the International Commission of Jurists

Issues and the Answers of the Government thereto will be sent to Parliament by way of information and the same will happen with CEDAW's COs and the Government's reaction to the COs.¹⁰ In 2001 and 2007, a General Meeting took place with the State Secretary or Minister responsible for emancipation affairs on the basis of the COs and the Government's reaction.¹¹ During both General Meetings, no motions were adopted by Parliament, thereby warranting the conclusion that those meetings served as a noncommittal exchange of ideas between the Government and Parliament.

What is more, those Meetings about the COs have turned out not to be the right place for discussing specific substantive policies. During the General Meeting about the fourth periodic report, the Minister responsible for emancipation affairs, for example, mentioned that the Minister of Justice would send the evaluation to Parliament and that this would be the appropriate moment to discuss the COs concerning the law abolishing the ban on brothels.¹² Nevertheless, both in the letter that was attached to the second evaluation and the reaction of the Government, the COs were not referred to.¹³ As a result, the discussion in Parliament about (the evaluation of) the prostitution policy did not address the concerns of CEDAW at all.

The Women's Convention is often only referred to in a general way as being a point of reference and a framework for emancipation.¹⁴ Moreover, in recent years the Women's Convention (and also the obligation to report) has often been referred to only in the context of *international* emancipation policy.¹⁵ This might suggest that reporting is not directly relevant

(NCJM) also wrote a shadow report to the second and third State report and the fourth shadow report was also written on their behalf.

¹⁰ Parliamentary Papers II 2001/02, szw0000825, 1 October 2001. Parliamentary Papers II 2006/07, 30420, nr. 46, 13 July 2007. Noteworthy is that the letter of 2001 is only two and a half pages long and only marginally addresses some recommendations, whereas the letter concerning the fourth reporting cycle is 9 pages.

¹¹ The COs about the second and third periodic report were discussed during a General Meeting on 28 November 2001. Parliamentary Papers II 2001/02, 28009 nr. 7. The General Meeting about the COs about the fourth periodic report took place on 10 October 2007. Parliamentary Papers II 2007/08, 30420, nr. 98. In the remainder of this Chapter, 'the State Secretary' will be used to refer to the State Secretary of Social Affairs and Employment Verstand-Bogaert, responsible for emancipation in the cabinet Kok II, in office from 3 August 1998 until 22 July 2002. 'The Minister' will refer to the Minister of Education, Culture and Science, Plasterk, responsible for emancipation in the cabinet Balkenende IV, in office from 22 February 2007 until 20 February 2010.

¹² Parliamentary Papers II 2007/08, 30420, nr. 98, 8. Noteworthy is the fact that the evaluation itself was sent to Parliament already on 23 April 2007. Parliamentary Papers II 2006/07 25437, nr. 54. Only the reaction of the Government was sent after the General Meeting. See Parliamentary Papers 2007/08 28684, nr. 119, 6 November 2007.

¹³ Parliamentary Papers II 2007/08, 28684, nr. 119, 6 November 2007.

¹⁴ This is especially the case for the most recent letters and notes laying down the emancipation policy. The letters and notes between 1997/98 and 2001/02 did discuss the Women's Convention in relation to specific policies.

¹⁵ In the note on emancipation policy 2008-2011 there are only references to the Women's Convention under Chapter 4, international emancipation policy, besides one reference in the summary to the fact that the

for policy making at the national level. Empirical evidence seems to support this conclusion, because COs are not mentioned in the notes, memoranda and letters laying down the policy in the field of emancipation. Only in a limited number of cases did the Government refer to COs out of its own motion, besides the letters it has sent to Parliament with a reaction on all COs.¹⁶

2.2. NATIONAL REPORTS AND IN-DEPTH STUDIES

At the domestic level, national reports have been conducted on the implementation of the Women's Convention, as well as in-depth studies about thematic parts of the Convention.¹⁷ The Government has explicitly acknowledged that the first national report resulted in a higher

starting points of equality of sexes and equal treatment are anchored in, among other instruments, the Women's Convention. Parliamentary Papers II 2007/08, 30420, nr. 50.

¹⁶ First of all, the 'evaluation of the Committee' was mentioned in the context of the 'tussenschoolse opvang' (school childcare during the afternoon). Parliamentary Papers II 2003/04, 29769, nr. 1, 6. Secondly, a letter from the Minister of Social Affairs and Employment refers to the necessity in the context of State reporting about the implementation of the Women's Convention of registration of gender and data and analysis of the different forms culturally related violence disaggregated by gender. Parliamentary Papers II 2003/04, 29200 XV, nr. 37, 5. Thirdly, the enactment of the budget of the Ministry of Social Affairs and Employment mentions the CO about the position of black migrant and refugee women. Parliamentary Papers II 2003/04, 29200 XV, nr. 2, 113. Fourthly, in response to a question about the trials concerning the SGP, the Prime Minister referred to CEDAW. Parliamentary Papers II 2005/06, nr. 3, 162-176. Fifthly, in reply to an answer, the Minister of Finance stated that the last 'advice' of CEDAW on the occasion of the fourth State report, with specific recommendations, did not have any practical consequences for the policy of the Ministry of Finance. Parliamentary Papers II, 2007/08, 30420, nr. 113, 4. Sixthly, in the enactment of the budget of the Ministry of Justice, it is provided that the recommendation of CEDAW concerning the Law on Names will be involved in the advice of the Working Group. Parliamentary Papers II, 2009/10, 32123 VI, nr. 2, 211. Finally, the Plan of Action of domestic violence mentioned the United Nations who urged the Government to review the gender-neutral wording of the policy. See the attachment to Parliamentary Papers II, 2007/08, 28345, nr. 70, 8. In this Plan of Action, CEDAW's final report was referred to in the footnote, together with the report of the Special Rapporteur on Violence Against Women, Yakin Ertürk, about her mission to the Netherlands. For the latter report see UN doc. A/HRC/4/34/Add.4, 7 February 2007.

¹⁷ This is the result of a proposal to amend the Act on the approbation of the Convention that obliges the Minister to send a report to Parliament about the implementation of the Convention in the Netherlands every four years. In 1997 the first national report of the Commission Groenman was issued, which contained 65 recommendations. *Het Vrouwenverdrag in Nederland anno 1997. Verslag van de commissie voor de eerste nationale rapportage over de implementatie in Nederland van het Internationaal Verdrag tegen Discriminatie van Vrouwen* (February 1997). On the occasion of this report, a conference was held in Nijmegen on 17 October 1997 during which several priorities were established. See Parliamentary Papers II 1997/98, 25893, nr. 2. The second national report contained a thematic part about the position of migrant and refugee women (*Het VN-Vrouwenverdrag in relatie tot de positie van vreemdelingen vrouwen in het Nederlandse vreemdelingenrecht en vreemdelingenbeleid* (Adviescommissie voor vreemdelingen zaken, Den Haag, December 2003)) as well as a general part examining the implementation of the entire Convention (MARIANNE H. MARCHAND, *Emancipatie op een zijspoor?; tweede nationale rapportage inzake de implementatie van het VN-Vrouwenverdrag* (Belle van Zuylen Instituut, Universiteit van Amsterdam, February 2003)). For the thematic part of the second national report of the Advisory Committee on Migration Affairs (ACZV) see the annex to Parliamentary Papers II 2002/03, just030524, 10 June 2003. For the general part see the annex to Parliamentary Papers II 2003/04, szw0400002, 22 December 2003. In addition, five in-depth studies were conducted about the Convention in the Dutch legal order, the significance of Article 12 of the Convention to the Netherlands, the effect of the Convention on the legal position of pregnant women and young mothers, the implications of the Convention for the Netherlands concerning the prevention and elimination of violence against women and Article 5 of the Convention. www.rijksoverheid.nl/onderwerpen/vrouwenemancipatie/beleid-internationaal/verenigde-naties.

visibility of the Women's Convention in terms of its meaning for the legal order and social and political developments and consequently a higher priority on the political agenda.¹⁸ In addition, the second national report referred to and discussed several of the COs to the combined second and third Dutch report, whereas in-depth studies examined CEDAW's General Recommendations and the COs of several States in relation to a topic in order to determine content, scope and significance of certain provisions of the Women's Convention. Therefore, those reports and studies do not only contribute to the visibility of the Women's Convention in general, but could also add to the impact of COs.¹⁹

It is important to point out that the national reports and in-depth studies were largely concentrated in the period between February 1998 and January 2004. After this period no in-depth studies were conducted anymore, except for a third national report that did not cover the (entire) Women's Convention, but only focused on distinction in education in relation to Articles 5 and 10 of the Convention.²⁰

2.3. PARLIAMENTARY SCRUTINY

Parliamentarians never introduced a motion addressing or giving effect to COs.²¹ Only in one instance have COs been mentioned in the proposal for amendment of the Law on Names. In the Explanatory Memorandum it was highlighted that the Netherlands had been given 'a rap on the knuckles' by CEDAW, but without explicitly reproducing the CO.²² The role of Parliament in relation to CEDAW is thus rather limited. This has also been acknowledged by government officials. This is because the real political debate takes place on the basis of notes

¹⁸ Parliamentary Papers II 1997/98, 25893, nr. 2, 2.

¹⁹ The commentaries of the CWI, E-quality and the CEDAW-Network about the reaction of the Government to the second national report, for example, mention and cite the critique and COs of CEDAW. Consequently, the COs about exit-programmes for prostitutes, the SGP and national machinery were touched upon during the General Meeting about the combined second and third report of CEDAW. Parliamentary Papers II 2003/04, 27061, nr. 23. Also the recommendation concerning statistics and information about violence was addressed in the thematic part of the second national report and also referred to in a letter of the Government concerning domestic violence. Parliamentary Papers II 2003/04, 29200 XV, nr. 37, 5.

²⁰ KARIN HOOGEVEEN, ANKE VAN KAMPEN AND FRANK STRUDULSKI, *Rapportage ongezien onderscheid in het onderwijs* (Sardes, December 2006) included as an attachment to Parliamentary Papers II 2007/08, 30420, nr. 47. Remarkable is the fact that the Women's Convention is only mentioned 9 times in this report, and only in the first chapter laying out the background to the report. In the remaining 82 pages the Convention is not touched upon, nor does the reaction of the Government address the Convention. Parliamentary Papers II 2007/08, DE/2008/8871, 21 March 2008.

²¹ Nonetheless, the *Women's Convention* was explicitly mentioned in five motions of Parliament.

²² As will be explained below in the context of the Parliamentary Question raised in an earlier instance, the Proposal refers to a study concluding that the Law is not in conformity with the Women's Convention. Legislative proposal of Van der Laan Democrats 1966 (D66). Parliamentary Papers II 2005/06, nr. 29353, nr. 18, 4.

and letters laying down the emancipation policy. Because Parliament, and especially the Second Chamber, is seen as forming part of the ‘core business’ for the civil service, this limited attention by Parliament has an influence on the importance that government officials attach to CEDAW and the process of State reporting.²³ As long as politicians and Members of Parliament hardly use or invoke the Women’s Convention and CEDAW, government officials will also refrain from doing so, because the civil service serves the politicians.

In general, the total number of references to the COs in the context of specific policy areas outside the Meetings about the report of CEDAW is 0, 1 or 2 times a year.²⁴ Those instances were mainly related to the COs in those fundamental areas where CEDAW found a violation (SGP) or determined that the law contravened the Convention (Law on Names), respectively three and four times.²⁵ It might be because of their principled character that those COs had the highest impact and were picked up most frequently by Parliament and also the press. In two instances, there were references to the concerns and/or the COs in written Parliamentary questions. Interestingly, the starting point and necessary condition for those questions was a study or report that put the issue (high) on the political agenda.²⁶ Noteworthy is the number of questions raised by Bussemaker of the Labour Party (PvdA). Between 8 June 1999 and 25 September 2002, she put forward a Parliamentary question in which the Convention was referred to eleven times. This warrants the conclusion that the attention of

²³ According to those officials, the process of State reporting is seen as too distant from the primary - national - process. In comparison, the EU is more part of the core business also given the awareness of the official and political leadership. As a result, European comparisons among peers have more impact. Interview 44. If the Second Chamber would ‘push’ more, then the Government could really do something with the COs. Interview 91.

²⁴ In this context, the General Meeting in Parliament about the report and COs of CEDAW is not counted. 2009/10 (1), 2008/09 (1), 2007/08 (2), 2006/07 (1), 2005/06 (2), 2004/05 (1), 2003/04 (2), 2002/03 (0), 2001/02 (2).

²⁵ Other policy areas in which the COs were referred to relate to the national machinery and NGOs, the fight against violence against women, sexual violence as grounds for asylum, the income requirement for family reunification and the prostitution policy. See respectively Parliamentary Papers II 2003/04, TK 25-1697-1698. Parliamentary Papers II 2003/04, 27061, nr. 23, 3-4 and 7. Parliamentary Papers II 2006/07, 30925, nr. 7, 8. Parliamentary Papers II 2007/08, 30573, nr. 7, 9. and Parliamentary Papers II 2009/10, 32211, nr. 5, 4.

²⁶ On 25 January 2002, Bussemaker and Albayrak, Labour Party (PvdA) raised a question concerning the position of au-pairs and on 24 March 2005 a question by Van der Laan, Democrats 1966 (D66) with respect to the Law on Names. The starting point of the first question was a report of the University of Tilburg that was presented on 17 January 2002, although this report itself does not refer to the Women’s Convention nor CEDAW or the COs. RALPH REEDE, *Positie van au-pairs uit landen buiten de Europese Unie in Nederland* (Wetenschapswinkel Katholieke Universiteit, Tilburg 2002). The question about au-pairs from countries outside the EU referred to ‘criticism’ of CEDAW and the remarks of the State Secretary before CEDAW, besides the concern of the Clara Wichmann Institute. Parliamentary Papers II, 2001/02, nr. 708. Also the question about the Law on Names was raised as a result of a report of the University of Utrecht of January 2005, which was presented to Van der Laan on 21 March 2005 during a symposium. See references to the report MARGRIET BRAAM, ‘Vaders wil, geen wet meer’ (University of Utrecht, January 2005) in the first paragraph of the Parliamentary question, Parliamentary Papers II 2004/05, nr. 1499. The Parliamentary question mentions the fact that the Netherlands is given a rap on the knuckles by CEDAW.

Parliament for the Women's Convention and thus the extent to which COs are picked up, depend to a large extent upon the interests of individual Parliamentarians.

Interestingly, the vast majority of Parliamentary questions were raised in the Parliamentary years 1999/00-2002/03.²⁷ Hence, the visibility of the Women's Convention was higher in this period. As we have seen, it was in this period that nearly all national reports and in-depth studies were conducted. Illustrative is also that Parliament did discuss the substantive content of the second State report in May 1999²⁸ and the shadow reports to the second and third report in February 2001.²⁹ In addition, the five motions and a legislative proposal concerning inheritance of noble titles, in which the Women's Convention was explicitly mentioned, were proposed in more or less the same period.³⁰ The majority of those five motions and the proposal were, *inter alia*, a reaction to national reports, the in-depth studies or shadow reports.

It is important to highlight in this context that the attention paid by Parliament and the Government to national reports and in-depth studies is more frequent and extensive in comparison with COs.³¹ This could possibly be attributed to the fact that those national reports are more visible, thorough and contain a more comprehensive analysis and have a

²⁷ I searched for 'Vrouwenverdrag' (Women's Convention) (30 results) and 'Verdrag' (Treaty) AND 'discriminatie' (discrimination) AND 'vrouwen' (women) (25 results) in the period of 1-1-1995 until 9-6-2010 in Parlando in 'Kamervragen Eerste en Tweede Kamer'. The results are: 2009/10 (2), 2008/09 (2), 2007/08 (1), 2006/07 (1), 2005/06 (2), 2004/05 (2), 2003/04 (0), 2002/03 (3), 2001/02 (3), 2000/01 (4), 1999/00 (4), 1998/99 (1), 1997-98 (3) and 1996/97 (2). The difference is even greater if one considers the number of cases in which the Convention was mentioned by the Parliamentarian in the question itself, and not in the answer by the Government and if the questions are excluded that deal with foreign policy or the human rights situation in another country. 2009/10 (1), 2008/09 (0), 2007/08 (0), 2006/07 (0), 2005/06 (2), 2004/05 (2), 2003/04 (0), 2002/03 (2), 2001/02 (3), 2000/01 (3), 1999/00 (4), 1998/99 (0), 1997-98 (3) and 1996/97 (1)

²⁸ Parliamentary Papers II 1998/99, 26206, nr. 10.

²⁹ Parliamentary Papers II 2000/01, 27061, nr. 12.

³⁰ One motion of Tonkens, the Green Party (GL) and Stuurman (PvdA) concerned the obligation for every ministry to conduct one emancipation effect report every year. This motion referred to the second national report as a starting point. Parliamentary Papers II 2003/04, 27061, nr. 24. Another motion was proposed by de Wit (SP) for a country-wide helpdesk the protection of women, also without a valid residence permit. This motion was a reaction to the fourth in-depth study about domestic violence. There was also a motion proposed by Visser-van Doorn, Christian Democrats (CDA), Schimmel (D66), Bussemaker (PvdA) and Van Gent (GL) in the context of the combination of employment and care which referred to the shadow report to the second and third periodic report. Parliamentary Papers II 2000/01, 27061, nr. 12. The other two motions dealt with the amount of money for the information point aimed at an improved implementation of the Convention and extra financial resources for the protection of women that are the victims of violence. Parliamentary Papers II 2000/01, 27411, nr. 9. Parliamentary Papers II 1999/00, 19637, nr. 514. The legislative proposal by Van Wijmen and Ross-van Dorp (CDA) was about the inheritance of noble titles through female line. In the Explanatory Memorandum attention is paid explicitly to international treaties, especially the Women's Convention, whereby the critique of the first national report on the direct discrimination in legislation about nobility is explicitly mentioned. Parliamentary Papers II 2000/01, 27074, nr. 5.

³¹ For the extensive reactions to the first and second national report, respectively 59 and 68 pages, see Parliamentary Papers II 1997/98, 25893, nr. 2 and the annex to Parliamentary Papers II 2003/04, szw0400002, 22 December 2003. See also the 62 detailed and specific questions concerning the substantive recommendations of the third in-depth study and the reaction of the Government thereto. Parliamentary Papers II 1998/99, 25893, nr. 6, 1-10.

better understanding of the national context, given the fact that they are written by nationals. In addition, those reports are written in Dutch, whereas CEDAW's final report including the COs is not translated into Dutch.

An important mediating factor for Parliament's attention is NGO lobbying. The commentaries, opinions and advices of NGOs are often explicitly mentioned or reacted upon by Parliamentarians during General Meetings or in letters and notes of the Government.³² This means that those NGOs are important for 'translating' COs to the domestic context and making Parliamentarians aware of those COs. The instrumental role of NGOs was also noted by several government officials. This is logical because the process of State reporting in itself is rather distant and invisible, because, as we shall see, it is hardly covered in the press and the Government does not have COs or State reports translated into Dutch. Parliament thus has to rely upon information of other sources, mainly NGOs.

2.4. MEDIA COVERAGE

The discussion in Parliament mentioned above about the critical comments in the shadow report to the second and third report was the result of an article in a newspaper.³³ This makes it clear that media coverage is an important factor contributing to the attention Parliament will pay to the CO. The attention of and the extent to which the dialogue with CEDAW and the subsequent COs were picked up by the press has decreased over time.³⁴ Whereas the shadow

³² In its commentary about the reaction of the Government on the COs to the fourth report, the CEDAW-Network focused specifically on the status and direct applicability of Convention, emancipation effect reports, coordination emancipation policy and mainstreaming, report Antilles, structure of reporting and subsidies NGOs. Those same issues came back in during the General Meeting about the fourth report given the requests for separate notes about the division of responsibility and coordination and the status of the Convention. Parliamentary Papers II 2007/08, 30420, nr. 98, 61 and 65. For the comments of the CEDAW-Network, see www.steo.nl/vnl/nieuws/2007/reactienetwerkkabinetsreactie.pdf (Last visited 9 June 2010). Another notable example is the question of the Socialist Party (SP) in the context of the prostitution policy referring to the COs reflecting the comments of the NGO *Vrouw en Recht* (Woman and Law) (VVR). Parliamentary Papers II 2009/10, 32211, nr. 5, 4. For the letter see www.vrouwenrecht.nl/opinie/vvr/brief_prostitutiewet1dec2009 (Last visited 9 June 2010). See also the references of Members of Parliament to the letter of the CEDAW-Network with questions about the implementation of the Women's Convention during the General Meetings of 7 and 12 November 2007, Parliamentary Papers II 2007/08, 30420, nrs. 97 and 106.

³³ See the references of Visser-van Doorn (CDA) and Bussemaker (PvdA) to the newspaper article '*Emancipatie is doorgeschoten*' (Emancipation has gone too far) in the discussion in Parliament on 5 February 2001 about issues related to the combination of work and care, paid leave and indirect discrimination. Parliamentary Papers II 2000/01, 27061, nr. 12, 3. One government official also emphasised that COs would have more influence if reported upon in the newspapers. Interview 91. Another government official noted the lack of attention. Interview 44.

³⁴ The analysis of the impact of the COs and the Women's Convention on the media focused on the printed press. Use was made of the Lexis Nexis newspaper search engine that provides access to five of the major countrywide newspapers. De Volkskrant, NRC Handelsblad, Trouw, Het Parool and AD/ Algemeen Dagblad. Unfortunately, this search engine does not provide access to the biggest newspaper De Telegraaf and

report and the COs concerning the second and third report were picked up by the media and rather extensively covered,³⁵ no attention was paid to the conclusions of CEDAW concerning the fourth and fifth reports. Illustrative of this scarce attention to CEDAW is the increase in the number of articles about the political party SGP in relation to the Women's Convention after 2005/06 due to the several Court decisions. Nonetheless, only in 1 of those 69 articles, a reference was made to CEDAW as well.³⁶ National reports and in-depth studies did receive relatively more attention by the press.³⁷

2.5. COURTS AND LEGAL PRACTICE

The Women's Convention is also largely absent in legal practice. Courts have only touched upon the Convention 30 times since December 1999.³⁸ Seven cases concern the political party SGP and eight others address immigration and asylum matters. In comparison, the European

the newspaper with a reformed character, *Nederlands Dagblad*, which is especially of interest because of the SGP. On 9 June 2010 a search was conducted on 'Vrouwenverdrag' (Women's Convention) for the period 1 September 1994 and 9 June 2010 (163 results). Additionally, a search was performed with the terms 'Verdrag' (Treaty) AND 'Vrouwen' (Women) AND 'discriminatie' (discrimination) AND NOT 'Vrouwenverdrag' (Women's Convention) for the period 1 September 1994 and 9 June 2010 (180 results), whereby the articles were screened for their relevance and duplication. The total number of references to COs and/or critique and concern of CEDAW: 2009/10 (0), 2008/09 (0), 2007/08 (0), 2006/07 (2), 2005/06 (1), 2004/05 (3), 2003/04 (2), 2002/03 (3), 2001/02 (11), 2000/01 (2).

³⁵ FRANK RENOUR, 'Emancipatie schiet haar doel voorbij' (Emancipation overshoots the mark), *Algemeen Dagblad*, 30 January 2001, 1. HERMAN STAAL, 'Emanciperen via VN' (Emancipation by way of UN), *NRC Handelsblad*, 1 February 2001, 2. In addition, 14 articles about the exclusion of women from membership by the political party SGP referred to CEDAW's combined second and third report, whereby it was stated that CEDAW 'lectured the Government', 'rapped the Government over the knuckles', 'called the Government to order' or appealed or condemned the situation as to the existence of the political party. Eight out of those fourteen articles appeared in the Parliamentary year 2001/02, three in 2001/02, two in 2003/04 and one in 2005/06. Attention in the press was also paid to the critique of CEDAW concerning victims of domestic violence and the Law on Names. 'VN: SGP discrimineert', *Algemeen Dagblad*, 1 October 2001, 1, 'Minister Donner bekijkt praktische uitwerking; "het naamrecht is anno 2005 niet geëmancipeerd"' (Minister Donner examines the practical result; "the Law on Names in 2005 is not emancipated"), *Het Parool*, 22 April 2005, 6, 'Dubbele achternaam moet kunnen' (A double surname should be possible), *de Volkskrant*, 22 April 2005, 3, 'Dubbele achternaam kind' (Double surname child), *Trouw*, 22 April 2005, 4. 2001/02 (1) and 2004/05 (3)

³⁶ MARIJN KRUK, 'Inperking van de islam treft ook andere religies' (Restriction of Islam will also affect other religions), *Trouw*, 17 November 2005, 5.

³⁷ That is to say, three articles appeared in the press about the first national report, one on the front page. AUKJE VAN ROESSEL, 'Ina Brouwer in een mijnenveld' (Ina Brouwer in a mine field), *de Volkskrant*, 21 March 1998, 1. BARBARA BERGER, 'De horzel steekt niet meer' (The hornet does not sting anymore), *Trouw*, 12 April 1997, 2. 'Vrouwen in Nederland nog steeds achterop' (Women in the Netherlands are still behind), *Het Parool*, 19 March 1997, 1 and 2. For the in-depth study about Article 12, see MARIJET GUNNING, 'Eigen bijdrage huisarts treft vrouw zwaar' (Women are hit hard because they have to pay part of the general practitioner's bill themselves), *Trouw*, 2 July 1996. The study about domestic violence: 'Opvanghuizen weigeren hulp aan illegale vrouwen' (Shelters refuse to help illegal women), *De Volkskrant*, 18 January 2000, 9.

³⁸ I searched for 'Vrouwenverdrag' (Women's Convention), 'CEDAW', 'Verdrag inzake de Uitbanning van alle Vormen van Discriminatie van Vrouwen' (Convention on the Elimination of All Forms of Discrimination Against Women) and 'Vrouwenrechtenverdrag' (Women's Rights Convention) in the online database www.rechtspraak.nl (12 April 2010). The database was created in December 1999.

Convention on Human Rights was dealt with by courts over 11,000 times, whereas the European Court of Human Rights (ECtHR) itself was cited on more than 2250 occasions.³⁹

CEDAW's COs were only explicitly mentioned four times. Two of those four cases related to the SGP.⁴⁰ The most recent example is the advice of the Solicitor General to the Supreme Court in the case of the SGP, which not only mentioned but also reproduced the COs of 2001 entirely.⁴¹ Nevertheless, the Supreme Court itself did not refer to CEDAW or the COs in its judgement.⁴² Earlier, the Court of Justice did refer to CEDAW's 'judgment' by way of confirming its own conclusion.⁴³ The decisions of the Council of State and the court in first instance about the SGP did, however, not mention the COs in their judgements.⁴⁴

Apart from the SGP case, Dutch courts have hardly scrutinised the Women's Convention on its merits. Often, the Women's Convention is only cited together with other Conventions, such as the ECHR, and Article 1 of the Constitution.⁴⁵ The courts also disagreed

³⁹ I searched for 'EVRM' (European Convention on Human Rights) (11536 results) and 'EHRM' (European Court of Human Rights) (2578 results) in the online database www.rechtspraak.nl (29 April 2010).

⁴⁰ In another case about the Law on Names there was a reference to academic literature in which the recommendation of Committee 2001 is discussed in the 'bibliography' of the conclusion of the Solicitor General of the Supreme Court. See the bibliography in the conclusion by Mr. F.F. Langemeijer LJN: AU9239, Supreme Court, R05/068HR. The other reference was done by a court to the concerns of CEDAW of 2001 about the position of prostitutes without a valid residence permit and the request to start monitor immediately the effects of the lifting of the ban on brothels. LJN: AE4749, Court Amsterdam, 013/020857-2.

⁴¹ See sections 1.4 and 2.20 and 2.21 of the conclusion by Mr. F.F. Langemeijer, LJN: BK4547, Supreme Court, 08/01354. It is remarkable that the Solicitor General did not refer to the most recent COs of 2007.

⁴² The Supreme Court ruled that the fact that a political party excludes women from being eligible for election cannot be accepted in the light of the prohibition of discrimination and Article 7 of the Convention in specific. According to the Court the State is obliged to take effective measures to address this situation. LJN: BK4547, Supreme Court, 08/01354, sections 4.5.5 and 4.6.1 and 4.6.2.

⁴³ LJN: BC0619, Court of Justice, 05/1725, section 5.10. Janse and Tigchelaar point to the fact that contrary to the judgement of the Court 's Gravenshage in which the (General) Recommendations of CEDAW were central, the consideration of CEDAW played a less prominent role in the ruling of the Court of Justice. Only after having concluded on the basis of other sources that the State violated Article 7 of the Convention, the Court referred to the 'judgement' of CEDAW as an additional argument. See LJN: AU2088, Court 's Gravenshage, HA ZA 03/3395. RONALD JANSE EN JET TIGCHELAAR, 'Het vrouwenrechtencomité: niet bekend en niet geacht?' in: N. Doornbos, N. Huls and W. van Rossum (eds), *Rechtspraak van buiten* (Deventer 2010), 306-316, 310-311.

⁴⁴ LJN: BB9493, Council of State, 200609224/1, LJN: AZ53, LJN: AZ5393, Court 's Gravenshage, AWB 06/2696, AU2091, Court 's Gravenshage, HA ZA 03/3396 and AU2088, Court 's Gravenshage, HA ZA 03/3395. Nevertheless, in the latter, the Court dealt extensively with CEDAW's General Recommendations.

⁴⁵ In the case about the preventive breast cancer screening for women older than 75 years, the claimants invoked Article 1 of the Constitution, Article 14 ECHR, Article 26 ICCPR, Articles 1 and 2 of the Women's Convention and Article 2 ICESCR. See LJN: BL3061, Court 's Gravenshage, 105.007.421/01 and LJN: BB6695, Court 's Gravenshage, KG 07/1099. In a case about self-employment tax deduction, Article 26 ICCPR, Article 14 ECHR and Article 2 of the Women's Convention were relied upon. LJN: BF7316, Supreme Court, 43992, LJN: BA8832, Court of Justice Amsterdam, P06/00242 and LJN: AX2230, Court Haarlem, 05/4098. In the case about the Law on Names, Article 7 sub 1 ICRC and Articles 8 and 14 ECHR were appealed to. LJN: AU9239, Supreme Court, R05/068HR. In another case, the claimants invoked Article 11, sub 1 ICESCR, CRC and the Women's Convention. LJN: AA6959, Court 's Gravenshage AWB 00/8599 VRWET. Article 1 of the Constitution, Article 6 ECHR and Articles 1, 3 and 13 of the Women's Convention were referred to in LJN: AE4383, Supreme Court, 1344. In the case about an asylum seeker who had exhausted all legal remedies, Article 8 ECHR, European Social Charter, Article 12 Women's Convention and Articles 9 and 24 ICRC were relied upon. LJN: BM0846, Court Utrecht, SBR 10/867 WMO.

whether certain provisions of the Convention would have direct effect. In the SGP cases, the courts awarded direct effect to Article 7.⁴⁶ At other times, courts expressed their doubts as to the direct effect.⁴⁷ That is to say, in the case about maternity benefits for self-employed women the court considered Article 11, paragraph 3, sub b to be ‘an instruction norm’, because this provision does not include a direct and unambiguous regulation which would indicate that the State has a margin of appreciation.⁴⁸

3. FACTORS AT THE STATE LEVEL

In this section, the attitude of the Government towards the process of State reporting will be addressed. The underlying assumption is that the incentives to comply with COs particularly depend on the perception of government officials of the process of State reporting and CEDAW in terms of its legitimacy, authority, persuasiveness and usefulness.⁴⁹ For this reason, several interviews were conducted with government officials who were/are involved in the process of State reporting.⁵⁰ Those government officials primarily regard State reporting as ensuing from the obligation to report under the Women’s Convention and in terms of accounting for one’s actions, instead of an opportunity to learn, whereby the Government is willing to implement COs.⁵¹ This section will explain why this is the case.

⁴⁶ LJN: BK4547, Supreme Court, 08/01354, section 4.4. The Supreme Court also ruled that Article 7 does not offer the State a margin of appreciation (section 4.5.1). LJN: BC0619, Court of Justice ‘s Gravenhage, 05/1725, LJN: AU2088, sections 4.1 - 4.7. Court ‘s-Gravenhage. LJN: AU2088, Court ‘s-Gravenhage, HA ZA 03/3395, section 3.15. Also the Council of State ruled that Article 7 paragraph c constitutes a provision that is binding on all persons (‘een ieder verbindende bepaling’) in the sense of Article 94 of the Constitution. LJN:BB 9493 Council of State, 200609224/1.

⁴⁷ See the doubts expressed by the court concerning the direct effect of the Convention in general. The court determined that in any case, no duty on the part of the authorities could be derived from either the Women’s Convention or the ICRC to afford shelter and support to everyone who enters the Netherlands. LJN: AB0942, Court Amsterdam, WB 00/4289. Also see LJN: AA6681, Court ‘s Gravenhage AWB 98/7896. In both cases the claimants did not invoke a specific provision of the Convention.

⁴⁸ Accordingly, the provision does not constitute a provision that is binding on all persons. LJN: BB0334, Court ‘s Gravenhage 257427/ HA ZA 06-170. Also see two cases of the Central Appeals Tribunal concerning Article 11 in relation to maternity benefits and social security. LJN: AH8706, Central Appeals Tribunal, 00/3437 WAZ and LJN: AA4301, Central Appeals Tribunal, 98/2020 NABW.

⁴⁹ The rationale for considering these theories and focus on the attitudes of key stakeholders in the context of State reporting is exactly because treaty monitoring bodies lack instruments to enforce and coerce compliance with the COs. This means that the effectiveness is mainly contingent upon other ‘mechanisms’, such as persuasion and learning. Hakimi argued in relation to the experience of the United States before the treaty monitoring bodies in recent years that it is unlikely that States accept as law the norms advanced by actors and institutions, such as the treaty bodies, if they consider them illegitimate or merely aspirational. MONICA HAKIMI, ‘Secondary human rights law’, *Yale journal of international law* 34 (2009), 596-604.

⁵⁰ See *supra* note 7.

⁵¹ The interviews with government officials have made it clear that officials attach importance to the process of State reporting and that there is a genuine commitment to report, which is considered -at least potentially - to be useful. Nevertheless, one government official stated that most departments see reporting as ‘doing the chores’ and he emphasized the lack of willingness to fundamentally change something. Interview 13.

First of all, the idea prevails that the Netherlands is fulfilling its obligations under the Women's Convention.⁵² During the General Meeting about the fourth periodic report, the Minister remarked that the Women's Convention obliges legislation and policy to eradicate discrimination against women and asks for 'appropriate measures' to promote women's development. In his opinion, the Netherlands fulfils this obligation.⁵³ The Minister therefore did not agree with the conclusion that the Netherlands failed the test or was given a clip round the ear, because in contrast with other States, the Netherlands 'did not break the regulations'. This self-satisfied attitude was also explicitly mentioned by several government officials.

In addition, COs are seen as 'advices' or mere 'opinions', whereby it is made clear that the political appraisal is ultimately made in the Netherlands.⁵⁴ During the General Meeting about the combined second and third report, the State Secretary emphasized that neither COs nor the Women's Convention need to be viewed as a timetable.⁵⁵ Several government officials also highlighted that 'we' have our own vision and 'they' (CEDAW) their interpretation. In this context, it was argued that CEDAW's remarks could easily be disregarded given their legally non-binding character.

This attitude towards State reporting and the COs is reflected in the explicit rejection of several COs. The most notable examples are the COs dealing with fundamental issues, such as those about the political party SGP and the Law on Names.⁵⁶ With respect to the SGP, the Government argued that in spite of CEDAW's conclusion, the Government is of the opinion that the current legislation meets the obligations of Article 7 of the Women's Convention.⁵⁷

One official also stressed that reporting is merely an obligation entailing hardly any need for action in terms of an agenda for the future. Interview 44.

⁵² In reply to a question of Stuurman (PvdA) whether the Netherlands is fulfilling the obligations arising from the Convention, the Minister of Social Affairs and Employment, Aart Jan de Geus, answered that the Government is indeed fulfilling its obligations, although he acknowledged that the second national report is critical. Parliamentary Papers 2003/04, 27061, nr. 23, 3-4 and 7.

⁵³ Parliamentary Papers II 2007/08, 30420, nr. 98, 6. The fact that the Netherlands is fulfilling the obligation to realize the rights for citizens under the Women's Convention was repeated in the letter of 5 November 2007. Parliamentary Papers II 2007/08, 30420, nr. 65.

⁵⁴ Parliamentary Papers II 2007/08, 30420, nr. 98, 7-8.

⁵⁵ The State Secretary used the word '*spoorboekje*' (railway timetable). According to the State Secretary, the Women's Convention aims to improve women's rights and governments have a certain margin to give an interpretation themselves meaning that the objectives of the Convention could be pursued differently. Similarly, during the General Meeting about the fourth periodic report, the Minister recognized that CEDAW's 'advices' are taken seriously, but that this does not mean that all the advices and comments will be adopted one-on-one.

⁵⁶ It is remarkable that the COs that were (explicitly) rejected were the most specific and clear ones. Not only is the language stronger ('is a violation' and 'contravenes the basic principle of the Convention'), but it is only with respect to its findings in those *substantive* areas of concern that CEDAW refers to specific Articles of the Women's Convention.

⁵⁷ Parliamentary Papers II 2001/02, szw0000961, 2. Fourth periodic report of States parties, UN doc. CEDAW/C/NLD/4, 10 February 2005, 47-48. In his letter to Parliament with a reaction to the comments of

Similarly, the Government has made it clear that it did not share CEDAW's opinion that the Law on Names contravenes the Women's Convention.⁵⁸ As elaborated upon earlier, a Parliamentarian proposed an amendment to the Law on Names on the points that CEDAW expressed its concerns. In its opinion to this proposal, the Council of State has stated that CEDAW reproduced the Law on Names incorrectly.⁵⁹ In addition, the Council of State remarked in its opinion that CEDAW did not provide a further explanation as to the question whether an objective and reasonable ground exists concerning the preference in the Dutch Law for the name of the father when parents cannot reach an agreement as to the name of a child. It also referred to the 'margin of appreciation' States are entitled to under the Women's Convention and the fact that this subject is defined by national traditions and that there exists a clear preference of the Dutch population.⁶⁰ On the occasion of the advice the then Minister of Justice, Piet Hein Donner, consequently argued that he had doubts about whether CEDAW rightly established a conflict.⁶¹

In other instances, the Government has shown - more implicitly - that it did not understand or fully agree with CEDAW's concern and the measures recommended in the COs.⁶² Illustrative is the remark of the State Secretary during the discussion of the fifth report that the Netherlands tries to do everything it can, and that it sometimes changes policies but that at other times the situation in the Netherlands is so specific 'that it is as it is'.⁶³

CEDAW to the fourth report, the Minister explicitly rejected CEDAW's recommendation to consider withdrawing the appeal, because he considered the matter to be very principal so as to make appeal obvious, because several fundamental rights and the relationship between the legislature and the judiciary are at stake. Noteworthy is that the State solicitor even held during the appeal that the Convention does not have direct effect. This is contrary to paragraph 26 (and 11 and 12) of the COs to acknowledge the direct effect of the Women's Convention in the domestic legal order. See section 1.9, LJN: BC0619, Court of Justice 's-Gravenhage, 05/1725, 5 December 2007.

⁵⁸ Parliamentary Papers II 2001/02, szw0000961, 3. It was even argued that, although CEDAW is of the opinion that it should be regulated differently, the political appraisal is made in the Netherlands. Parliamentary Papers II 2007/08, 30420, nr. 98, 7-8.

⁵⁹ Parliamentary Papers II, 2005/06, 29353, nr. 20, 3. That is to say, if the parents cannot reach an agreement as to the name of a child, the child will automatically receive the name of the father instead of, as CEDAW states, the father having the ultimate decision.

⁶⁰ Parliamentary Papers II, 2005/06, 29353, nr. 20, 3. The Council put forward that the ECHR did pay attention to this question and concluded that discrimination is out of the question. The Council of State advised that the amendment should also go into this question for the assessment of the conformity of the current Law with Article 16 (g) of the Women's Convention.

⁶¹ Parliamentary Papers II, 2005/06, 29353, nr. 20, 4.

⁶² See for example, the efforts that CEDAW urged the Government to take in paragraph 210 to provide training and education to prostitutes. The Government made it clear that the Dutch policy is targeted at fighting excrescences in prostitution and not prostitution as such. Other examples are the use of quotas, the responsibility of the European part of the Kingdom for the Netherlands Antilles and Aruba and the status of the Convention in the domestic legal system.

⁶³ For the purpose of this research, the discussion of the fifth State report during the 45th session was attended.

Given the Government's own assessment of its compliance with the Women's Convention, it comes as no surprise that the Government sees the dialogue with CEDAW as a 'defence of the report' or a 'country-examination', whereby the main objective is to give 'a good answer' to the critical questions of CEDAW.⁶⁴ This means that the discussion of the State report with CEDAW hardly ever takes the form of a 'constructive dialogue'. During the discussion of the fifth State report, for example, there was hardly any self-criticism. Nor did the delegation express difficulties or problems or was CEDAW asked for suggestions. One government official pointed to the tension between the wish of CEDAW to have a constructive dialogue and substantive talks with experts, on the one hand, and the wish to speak with a politician, on the other hand. The latter unavoidably takes the form of a defence and a disguised discussion with Parliament. Other government officials pointed to the high number of questions leading to the 'dishing out of answers' instead of a real discussion.

Another important factor for the impact and effectiveness of the process of State reporting, not directly related to the attitude of the Government, is the strength of the national machinery and the knowledge of government officials. The Netherlands Emancipation Review Committee (Review Committee) concluded that the interdepartmental supporting structure has functioned insufficiently since 2001.⁶⁵ Similarly, a (comparative) study concluded that the national machinery has weakened since the nineties. The study, furthermore, pointed to the loss of the coordination function of the central policy unit, given the fact that the function of the Direction Emancipation had been reduced to eight core policy areas.⁶⁶ This is also reflected in the limited control and pressure exercised by the Direction in relation to the follow-up and implementation of the COs vis-à-vis the responsible line Ministries, besides the letter of the Government with a reaction to all COs.⁶⁷

The Review Committee has also concluded that there was a lack of gender expertise and knowledge among government officials about international obligations, including the

⁶⁴ Parliamentary Papers II 2006/07, 30420, nr. 24. Parliamentary Papers II 2007/08, 30420 nr. 61, 7. Parliamentary Papers II 2008/09, 30420, nr. 136, Parliamentary Papers II 2009/10, 30420 nr. 141.

⁶⁵ Visitatie Commissie Emancipatie, 'Coördinatie van emancipatiebeleid en gender mainstreaming bij de rijksoverheid', docs.minszw.nl/pdf/35/2007/35_2007_3_10317.pdf (last visited 11 June 2010), 11-12.

⁶⁶ J.V. OUTSHOORN, 'Insituties voor emancipatiebeleid: Nederland in een international context', docs.minszw.nl/pdf/129/2007/129_2007_3_10318.pdf (last visited 11 June 2010) and VISITATIE COMMISSIE EMANCIPATIE, 'Coördinatie van emancipatiebeleid en gender mainstreaming bij de rijksoverheid', docs.minszw.nl/pdf/35/2007/35_2007_3_10317.pdf (last visited 11 June 2010), 7-8.

⁶⁷ This issue was brought up by several government officials. See also the concern of CEDAW in UN doc. CEDAW/C/NLD/CO/5, para. 14.

Women's Convention.⁶⁸ An additional difficulty in this context is that emancipation of women in general is not regarded as a priority issue.⁶⁹ According to the Review Committee, the understanding that the necessity of having an emancipation policy and gender mainstreaming also results from international obligations is lacking.⁷⁰ Illustrative is the report of the Netherlands Government in the context of the 15th anniversary of the Beijing Declaration providing that the Government has 'no special actions aimed at human rights at women'.⁷¹ An indication or explanation for this might be that various Ministries had been approached with requests for contributions to reports whereby the context was insufficiently clear and the deadlines too short.⁷²

4. FACTORS RELATED TO CEDAW

In the previous section, several factors at the State level explaining the limited impact and effectiveness have been discussed. In this section, the focus will be on the functioning of CEDAW. There is, however, a clear interrelationship between the factors at the State level and those related to CEDAW, because the attitude and ideas of government officials about the process of State reporting and CEDAW are directly shaped by their experience with CEDAW.

First of all, government officials have lamented the fact that several of CEDAW's questions were rather basic and/or showed a limited knowledge about the national context. There was also a question by the Chinese delegate about isolation problems among elderly rural women as a consequence of a lack of public transport and community involvement.⁷³

⁶⁸ VISITATIE COMMISSIE EMANCIPATIE, 'Een beetje beter is niet goed genoeg. Emancipatiebeleid en gender mainstreaming bij de rijksoverheid. Eindrapportage visitaties 2005-2006' (2007), docs.minszw.nl/pdf/129/2007/129_2007_3_10315.pdf (last visited 11 June 2010), 28 and 33.

⁶⁹ Interview 87. There is a lack of interest among the official and political leadership. Interview 63. Interview 44.

⁷⁰ VISITATIE COMMISSIE EMANCIPATIE, 'Dat moet echt beter. Emancipatiebeleid en gender mainstreaming bij de rijksoverheid in 2005. Voorlopig beeld.', 10. This report can be found in the attachment to Parliamentary Papers II 2005/06, 30420, nr. 3. Also see MARGREET DE BOER, 'Onwil of spraakverwarring? Of wat er moeilijk is aan het implementeren van het VN-Vrouwenverdrag', *Tijdschrift voor genderstudies* 4 (2008), 47-53, 48-49. According to De Boer, the Government shows insufficiently that the Convention includes human rights instead of only policy objectives. During the discussion of the second and third report, the Government itself stated that it was 'by no means satisfied' that the Women's Convention was known well enough. Summary record, CEDAW/C/SR.512, 6 July 2001, para. 14.

⁷¹ Report of the Netherlands Government to the UNECE for the preparation of regional review and appraisals in the context of the 15th anniversary of the adoption of the Beijing Declaration and Platform for Action in 2010 (The Hague, March 2009), www.unece.org/gender/documents/Beijing+15/Netherlands.pdf (Last visited 23 March 2010)

⁷² VISITATIE COMMISSIE EMANCIPATIE, 'Coördinatie van emancipatiebeleid en gender mainstreaming bij de rijksoverheid', docs.minszw.nl/pdf/35/2007/35_2007_3_10317.pdf (last visited 11 June 2010), 20.

⁷³ See Summary record of the 917th meeting, UN doc. CEDAW/C/SR.917, 18 March 2010, para. 34. The State Secretary responded by saying that 'I do not know whether you have visited our country', because it is two

This example was given by almost all government officials as an example of how the own mind frame and background and cultural differences of the several experts can be clearly heard in the questions, thereby showing a lack of understanding and knowledge about the Dutch context.⁷⁴ Other questions and remarks showed that not all experts were that well prepared, which was noted by government officials as well.⁷⁵ Although those rather small errors are completely understandable given the fact that expert members of CEDAW fulfil their work voluntarily without any remuneration, often next to full-time jobs, they might, nonetheless, have a negative consequence for the authoritativeness and the usefulness as perceived by the State.⁷⁶

As a result of the limited possibility and time for experts to prepare themselves, they have to rely on the information provided by NGOs in their shadow reports. Officials criticise that CEDAW easily takes over the criticism of NGOs without question.⁷⁷ The problem with this is that NGOs often represent only one audience and at the same time lose sight of the economic reality as a result of which their criticism is seen as one-sided or only partially true. Conversely, the Government has to consider and weigh several interests which necessitate nuance and different point of views. This is insufficiently taken into account by CEDAW, which is seen by some government officials as holding ‘a single issue campaign’ by only adopting an empowerment and emancipation perspective, without considering that the reality is often more unmanageable. That is to say, CEDAW does not consider budgetary implications, economic interests, clashes with democracy and other fundamental rights and the legal dimensions, such as European Union Law.

A related issue is the alleged lack of independence. CEDAW is seen by some government officials as not always objective and political, also given internal discussions concerning sexual and reproductive health and lesbian, gay, bisexual and transgender rights. This means that several members are conservative and against certain - for the Netherlands at

hours from border to border. She also stated that this is not the biggest problem the Netherlands is currently facing.

⁷⁴ They also pointed to the limited capacity of experts to acquaint themselves with all the subtleties of all the countries being reviewed, given their full time jobs besides the work as an expert.

⁷⁵ During the fifth dialogue, one expert remarked that ethnic and minority women are not visible in political functions, although Appendix 9 to the State report contains data and statistics about ethnic minority women in politics showing that this is not entirely the case. One government delegate referred in her response to a question of an expert to a study about gender-related violence that had been sent to CEDAW, but that had apparently not been read by the members of CEDAW. There was also a question about whether the Government is considering withdrawing declarations or reservations, while the Netherlands does not have reservations at all. Another expert referred to Suriname.

⁷⁶ That is to say, mainly instinctive. Interview 42. Also the fact that CEDAW sometimes is perceived as droning on and being too negative has a detrimental effect on its authority. Interview 33.

⁷⁷ The result of the fact that CEDAW seems to attach more value to the information of NGOs, little is done with the dialogue and the information from the Government. Interview 13.

least natural - human rights.⁷⁸ Another point of concern is the fact that CEDAW only has two male members. It is perceived that the stature of CEDAW would improve if there would be more male experts, because there is a risk that CEDAW is seen as a biased club of feminist lawyers.⁷⁹

Another factor explaining the limited impact and effectiveness that boils down to the usefulness is the specificity and determinacy of COs. Several COs are very broad and unspecific. This is especially the case with the COs about measures in the socio-economic field related to the labour market participation of women and the position of immigrant, refugee and minority women.⁸⁰ Those COs are rather undetermined and aspirational referring to ‘greater efforts’, ‘additional programmes’, ‘sufficient childcare places’, ‘relevant follow-up steps’, and the increase, intensifying or strengthening of efforts.⁸¹ It is remarkable that one paragraph often includes multiple and diverse measures that CEDAW urges or recommends the Government to take, while each measure on its own is already rather broad and unspecific. Given the fact that the measures prescribed are general and do not outline a specific course of action, it is unclear what kind of measures CEDAW has in mind and how the State could intensify its efforts. As a result, it might be uncertain what the contribution and the usefulness of the COs is. Officials also noted the long time span between the submission of the report and the List of Issues, both dealing with a period long before, while a lot of new developments have taken place in the meantime. As a consequence, the usefulness and impact is diminished as well.⁸² Even when measures have been taken in line with COs, one could question whether this was the result of the COs. This also because, according to government officials, COs often coincide with the measures already in place.⁸³

5. DIFFERING VIEWS ABOUT THE NATURE OF THE OBLIGATIONS

⁷⁸ According to one government official, this does not do CEDAW any good. Interview 79.

⁷⁹ Interview 53.

⁸⁰ COs 2001, A/56/38(SUPP), paras 203-206, 213-214 and 216-218. UN doc. CEDAW/C/NLD/CO/4, paras 17-18, 27-30.

⁸¹ For example, paragraph 204 recommended the review of legislation, but it was not indicated in what way legislation needed to be reviewed. Paragraph 206 referred to rather general notion such as measures to eliminate discrimination against immigrant, refugee and minority women, both in society at large and within their communities and the promotion of the human rights of women over discriminatory cultural practices. COs 2001, A/56/38(SUPP).

⁸² In this regard it is interesting to note that the fifth report of the national rapporteur on human trafficking refers to the fourth State report and acknowledges that there is a great time lapse between the period about which is being reported and the moment of consideration of the report by CEDAW. Parliamentary Papers II 2006/07, 28638, nr. 32, 12 July 2007, 39-40.

⁸³ Nevertheless, it was noted by those officials that COs could support and strengthen policy that is being developed. What was made clear as well was that measures were often taken not because of the Women’s Convention or the COs, but because the measures were seen as desirable and natural in themselves.

As has been made clear in the previous section, the Government sometimes rejects COs. This disagreement is essentially the result of the divergence of views about the nature of the obligations under the Women's Convention between the Government and CEDAW also in light of other international obligations. This is another important reason for the limited impact and effectiveness of the process of State reporting and COs.

Whereas CEDAW interprets the Women's Convention broadly and progressively, the State has a more restrictive view about the obligations under the Women's Convention.⁸⁴ This divergence is for example reflected in the discussion about the status and the direct effect of the Women's Convention.⁸⁵ According to the Government, the Women's Convention contains rather obligations of conduct than obligations of result, since the Convention is not giving an unambiguous framework because of the different national contexts in which it needs to be implemented.⁸⁶

A related issue is the disagreement about the form of equality that should be achieved on the basis of the Women's Convention, being it merely *de iure* or also *de facto*. The Government, for instance, has rejected the recommendation about the accessibility of elderly women to pensions and health care, because those facilities are at least formally equally accessible.⁸⁷ Another example of this is the reasoning that the obligation in Article 5 of the Convention has been fulfilled, because the Equal Treatment (Full-time and Part-time Workers) Act avoids any reference to full-time or part-time employees.⁸⁸ Similarly, the Government deems gender neutral wording of policy the correct starting point, for example in the context of domestic violence, human trafficking or the integration courses.⁸⁹

⁸⁴ See for example Feride Acar, former Chair of CEDAW, stating that CEDAW is 'famous for integrating progressive standards into its interpretation of the Convention' and that the views expressed by experts during the constructive dialogue 'bear testimony to a remarkably bold interpretation of the Convention'. FERIDE ACAR, 'Thoughts on the Committee's past, hopes for its future' in C. Flinterman and B. Schöpp-Schilling (eds.), *The circle of empowerment: twenty-five years of the UN Committee on the Elimination of Discrimination Against Women* (New York: The Feminist Press at the City University of New York, 2007), 340-345, 342.

⁸⁵ UN doc. CEDAW/C/NLD/CO/4, para. 11 and 12. CEDAW/C/NLD/CO/5, 8, 12 and 13. See *supra* notes 46-48.

⁸⁶ Rather, the obligation of efforts needs to be translated in an obligation of result at the national level. Parliamentary Papers II 1997/98, 25893, nr. 5, 6.

⁸⁷ Parliamentary Papers II 2001/02, szw0000961, 1.

⁸⁸ Fourth periodic report of States parties, UN doc. CEDAW/C/NLD/4, 10 February 2005, 62.

⁸⁹ See UN doc. CEDAW/C/NLD/CO/4, para. 19. See also the report of the Visitatie Commissie Emancipatie, 'Emancipatiebeleid en gender mainstreaming bij het Ministerie van Justitie. Eindrapportage visitatie 2005-2006' static.ikregeer.nl/pdf/BLG11190.pdf (last visited 11 June 2010), 7. A similar reasoning is applied in relation to integration courses in response to the concern of CEDAW in paragraph 27. The Government states that it 'feels that the Integration Act does not result in discrimination against women', because the mandatory requirement of integration courses applies to for all foreign nationals who want to live in the Netherlands permanently, irrespective of whether they are men or women. Fifth periodic report of States

This divergence of views also boils down to how one views the role and functions of the State in society vis-à-vis individual responsibilities and the extent to which other fundamental rights and freedoms and multiformity as such should be respected, given the potential clash that exists between State action and the freedom of expression, religion and education.⁹⁰ The Government, for example, does not seem to favour temporary special measures for specific (vulnerable) groups of women and minorities, at least not in the sense of the Women's Convention.⁹¹ Furthermore, the Government considers that the improvement of the disadvantaged position of women belonging to ethnic minorities is 'their own responsibility to an important extent'.⁹² Another example of how the role of the State could clash with the freedom of individuals is visible in the debate on whether or not a high number of women employed in part-time jobs is undesirable. According to the former Minister of Social Affairs and Employment, De Geus, it is not undesirable, because the freedom to choose whether or not to work should also be respected.⁹³

parties, UN doc. CEDAW/C/NLD/5, 24 November 2008, 27. This means that the Government does not consider whether this policy might disproportionately affect women.

⁹⁰ The first national report points to the fact that State action aimed at influencing the mentality of people in the context of gender ideology and stereotyping might conflict with respect for multiformity and the freedom of expression, religion and education. Besides, a possible disagreement about the desirability of authorities to steer and influence society, the report also refers to the doubts about the potential of the authorities. 'Het Vrouwenverdrag in Nederland anno 1997. Verslag van de commissie voor de eerste nationale rapportage over de implementatie in Nederland van het Internationaal Verdrag tegen Discriminatie van Vrouwen' (February 1997), www.rijksoverheid.nl/onderwerpen/vrouwenemancipatie/documenten-en-publicaties/rapporten/2004/10/15/het-vrouwenverdrag-in-nederland-anno-1997.html, 52-53.

⁹¹ COs 2001, A/56/38(SUPP), para. 218. UN doc. CEDAW/C/NLD/CO/4, paras 18 and 19. UN doc. CEDAW/C/NLD/CO/5, paras 22 and 23. During the discussion of the second and third report, the State Secretary explained that affirmative action plans had been tried in the Netherlands and had not yielded results. Summary record, UN doc. CEDAW/C/SR.512, 6 July 2001, para. 51. During the review of the fourth report, the Government said that it was against legal quotas for women holding public office or political positions because positions in the Ministry were filled on the basis of qualifications, irrespective of gender. Summary record of the 767th meeting (Chamber B), UN doc. CEDAW/C/SR.767(B), 5 March 2007, paras 6 and 45. The Government did speak about 'the special temporary measures introduced by the Government to achieve equal representation in senior management positions were often reflected in such measures adopted at the company level.' Summary record of the 768th meeting (Chamber B), UN doc. CEDAW/C/SR.768(B), 2 February 2007, para. 15. It is, however, unclear which special temporary measures the Government refers to, since the fourth report does not mention them.

⁹² Fourth periodic report of States parties, UN doc. CEDAW/C/NLD/4, 10 February 2005, 23. It also held that the focus of emancipation policy must shift from legislation to encouraging initiatives by women and girls themselves.

⁹³ Summary record of the 767th meeting (Chamber B), UN doc. CEDAW/C/SR.767(B), 5 March 2007, para. 7. In response to critical reactions of members of Parliament about the abandoning of the objective of men having a share in care tasks of 40% by 2010, Minister Plasterk remarked that he thinks that the Government should not determine that men should wash more socks. See the reactions of Van Gent (GL) and Van der Burg Parliamentary Papers II 2007/08, 30420, nr. 98, 3-4. According to him, women should get the freedom to develop themselves completely equal in all forms, instead of the Government saying that men should contribute 35% instead of 30% to care tasks. Parliamentary Papers II 2007/08, 30420, nr. 97, 23.

These divergent views often boil down to conflicting obligations under international and European law, encompassing different standards of equality.⁹⁴ As we have seen, the Government often refers to other international obligations or jurisprudence of other international courts in order to justify non-compliance with COs.⁹⁵ For example, with respect to the Law on Names, the Government pointed to the ECtHR that ruled in a case against the Netherlands that the difference in treatment is reasonable and proportional.⁹⁶ In the context of the CO about the discrimination part-time workers are facing in relation to overtime, the Government mentioned the ruling of the European Court of Justice (ECJ) that ‘it was not discriminatory to deny overtime pay to a part-time worker.’⁹⁷ Similarly, jurisprudence of the ECJ has curtailed the possible forms of preferential treatment.⁹⁸ As a consequence of those conflicting treaty obligations, an appraisal of interests has to take place. The Government regards the State as the most appropriate entity to do so. The Government has clarified this in the Memorandum of Answer in the context of the legislative approval of the Women’s Convention by stating that the Women’s Convention does not provide provisions concerning the delineation of the working of the non-discrimination principle vis-à-vis other fundamental rights and freedoms. As a result, every State should make this delineation itself with a view to other UN human rights treaties.⁹⁹ This is also possible given the broad provision in the Women’s Convention, referring to ‘all appropriate measures’, which makes different interpretations of the Women’s Convention feasible.¹⁰⁰

6. CONCLUSION

This contribution found that the limited level of compliance and thus the effectiveness of State reporting under the Women’s Convention for the Netherlands can be explained, first and foremost, by the limited impact and lack of attention paid by domestic actors. Above all, an active involvement of Parliament and media coverage are crucial for the attention paid and

⁹⁴ RIKKI HOLTMAAT AND CHRISTA TOBLER, ‘CEDAW and the European Union's policy in the field of combating gender discrimination’, *Maastricht Journal of European and Comparative Law* 12 (4) (2005), 399-425.

⁹⁵ During the discussion of the fourth report it was stated that the B-9 arrangement was in line with European Union guidelines for residence permits for victims who cooperated with the authorities.

⁹⁶ ECHR 27 April 2000, nr. 42 973/98 (Bijleveld vs. the Netherlands).

⁹⁷ Summary record, UN doc. CEDAW/C/SR.512, 6 July 2001, para. 47. COs 2001, A/56/38(SUPP), para. 214.

⁹⁸ Parliamentary Papers II 2004/05, 28770, nr. 11, 4.

⁹⁹ See the quote of Schuurmans and Jordens 74-Ib Zwolle, 1992, 1372 in MATTHIJS DE BLOIS, ‘De mannenpartij en het Vrouwenverdrag’, *Nemesis* 6 (2002), 169-179, 178.

¹⁰⁰ Verslag van de workshops van het Symposium ‘Handen en voeten aan het Vrouwenverdrag’, Rijksuniversiteit Limburg, 4 November 1994, *Nemesis I* (1995), 19-22, 21-22.

importance attached by government (officials) to the process of State reporting, which is essential for compliance with COs. From this perspective it is encouraging that CEDAW recently launched several initiatives to enhance the effectiveness, the aim of which is to increase the involvement of actors at the national level, such as NGOs and Parliament, in relation to the follow-up of COs.¹⁰¹ In addition, a follow-up procedure was put into place.¹⁰²

Nonetheless, it is still to be seen what the results of those initiatives will be, at least for the Netherlands. In light of the second main conclusion of this Chapter, the effects will not be world-shattering, because the biggest obstacle for compliance with COs are the not so positive attitudes and ideas of government officials about the usefulness, legitimacy, authority and persuasiveness of the process of State reporting and CEDAW. The perception of government officials is reinforced by the functioning and working of CEDAW and the fact that there exists a fundamental divergence in views regarding the nature of the obligations under the Women's Convention between the Government and CEDAW. This has as a result that COs are hardly complied with and hardly ever lead to changes in policy and/or legislation.

One might wonder whether the results only hold true for the Netherlands or apply to other States as well. The limited academic research conducted so far as well as the concept paper of the High Commissioner proposing a unified Standing treaty body hint at a larger generalizability of the findings.¹⁰³ This would imply that the limited impact and compliance with COs of CEDAW and the other UN human right treaty bodies is endemic in the *current* system of treaty monitoring and supervision. This also begs the question whether this means that this limited follow-up of COs is inherent in the system or susceptible to change and if so,

¹⁰¹ 'Statement by the Committee on the Elimination of Discrimination Against Women on its relationship with non-governmental organizations' adopted during the 45th session (18 January - 5 February 2010), www2.ohchr.org/english/bodies/cedaw/docs/statements/NGO.pdf. See the statement 'National Parliaments and the Convention on the Elimination of All Forms of Discrimination Against Women' adopted during the 45th session, www2.ohchr.org/english/bodies/cedaw/docs/statements/Parliamentarians.pdf (last visited 15 June 2010). Also see the - standard - paragraph in the COs inviting the Government to encourage Parliament 'to take necessary steps with regard to the implementation' of the COs. UN doc. CEDAW/C/NLD/CO/5, para. 9.

¹⁰² CEDAW requests the State to submit a follow up report, within two years, about 'the steps undertaken to implement the recommendations contained in paragraphs 27 and 29.' UN doc. CEDAW/C/NLD/CO/5, para. 52.

¹⁰³ Concept paper on the High Commissioner's proposal for a unified Standing treaty body, UN doc. HRI/MC/2006/2, 22 March 2006, paras 20-28. See especially paragraph 26 in which it is provided that: 'governments frequently pay insufficient attention to the recommendations adopted by the treaty bodies, and lack of awareness or knowledge among national constituencies about the monitoring procedures and their recommendations, renders these invisible at the national level.' For a general study about the impact of UN human rights treaties in twenty different countries that reaches a rather similar conclusion while pointing to comparable factors, see CHRISTOF HEYNS AND FRANS VILJOEN, 'The impact of United Nations human rights treaties on the domestic level', *Human rights quarterly* 23 (2001), 483-535. For (critical) reviews of the level of compliance with the Women's Convention in relation to CEDAW see: VEDNA JIVAN AND CHRISTINE FORSTER, 'Challenging conventions: in pursuit of greater legislative compliance with CEDAW in the Pacific', *Melbourne journal of international law* 10 (2009), 655-690. ANGELA M. BANKS, 'CEDAW, compliance and custom: human rights enforcement in Sub-Saharan Africa', *Fordham international law journal* 32 (2009), 781-845.

whether changes should take place within the existing system or whether the system as a whole needs to be reformed.