

NGO's Notes on the 5th Report of The Netherlands  
On behalf of the pre-session working group of the Committee on the Elimination of  
Discrimination against Women

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The following organisations cooperate in the Dutch CEDAW Network: Aim for Human Rights, E-Quality, FNV, IIAV, Movisie, Nederlandse Vrouwen Raad, St. Emancipatie Online, Studie- en Informatiecentrum Mensenrechten van de Universiteit Utrecht, Tiye-International, Vereniging voor Vrouw en Recht Clara Wichmann, Vluchtelingenorganisaties Nederland, Justitia et pax and several independent CEDAW specialists.

NGO's of The Netherlands will publish an extended "Shadow report" before the 45th session of CEDAW, when the 5th Report of the Dutch Government comes up for discussion.

In this brief report, following below, some issues are highlighted on behalf of the pre-session working group of the 43rd session of the Committee.

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## Weak legal position of domestic workers

CEDAW articles 3, 5, 11 and 13

The Dutch NGO's are concerned about the description the Dutch government presents about the position of domestic workers (p.33/34 of the report under the title "*measures for well functioning personal services*"). The report fails to mention that from 2007 onwards the legal position of domestic workers, most of them women, has weakened.

Domestic workers in private households, predominantly women, enjoy less social protection than all other employees. Sometimes people wrongly assume that domestic workers are self employed or even entrepreneurs working under Terms of Reference (TOR). The employment relation of most domestic workers meets the requirements for employees (art. 7:610 Civil Code) and therefore domestic workers ought to enjoy social rights and social protection. Rights like for instance the statutory minimum wage, paid leave and holiday allowance. The category of domestic workers who work for a private employer on usually less than three days per week has diminished social rights. Unlike all other employees however those domestic workers are not allowed to participate in social security schemes, unless they pay a much higher contribution (both the employers contribution as well as the workers contribution). As a consequence domestic workers are not entitled to unemployment and disability benefits. They do not receive any compensation for health insurance payment, like all other employees. While all other workers are entitled to receive payment of at least 70 percent of their wages when they are ill during a period of two years, the entitlement of domestic workers is only for six weeks. Other diminished social rights entail less employment protection and no entitlements to a written employment contract.

This weak legal position was applicable to domestic workers working less than three days for a private household, no matter how many private employers they worked for. The number of hours they worked for one employer was irrelevant as well (could be half an hour per day or nine hours). No attention is being paid to accumulation of jobs: domestic workers might work for several private households or private employers without enjoying full social rights. Homecare workers, financed by public homecare schemes, working less than three days for the same private household, were classified as domestic workers as well. The homecare institution acted as the intermediary and the private household was the fictive employer. It made no difference for homecare workers with a full time working week combining homecare for several households. They were denied full social rights as well. It is obvious that the use of homecare workers with diminished social rights is cheaper than the use of homecare workers employed by the institutions.

In the opinion of Dutch NGO's the exceptions Dutch social law makes for domestic workers is not in accordance to CEDAW, as these exceptions in particular affect women.

Since 2007 this weaker legal position has been extended to domestic workers working **maximum three days a week** for the same private household. This means that the category of domestic workers with diminished social right has increased. The government report does not mention this change of legislation. Again: the number of hours per day is irrelevant as is the number of employers. Moreover: the definition of domestic work has been extended to all personal services in the private household, provided it is limited to the maximum of three days. This means that even more workers in childcare, nursing or other health work in the private home now have to accommodate themselves in this underprivileged position. Obviously most of the workers concerned are women.

The government itself has been one of the main beneficiaries of the change of legislation, since it is applicable to the publicly financed homecare (WMO – Social Support Act), as well as the healthcare at home financed by the Exceptional Medical Expenses Act (AWBZ). As a result the level of costs of public health care is decreased. AWBZ care can take the form of the so called Personal Budget (PGB) or the so called care in natura given by workers not employed by the care institutions (or given by workers

intermediated by the care institutions). There is a shift towards the home and health care in which the private household acts as (fictive) employer for the home care workers instead of the care institution, because that is cheaper for the public budgets. The result of the change of legislation is that tens of thousands of workers in the home and health care have to face diminishing social protection.

When the change of legislation was debated in parliament no attention was paid to CEDAW at all.

The Dutch NGO's estimate that the total number of women workers not entitled to the same social rights as other workers varies between 200.000 and 300.000, of which at least 150.000 are directly funded by public social and health schemes. At least 95 percent of those workers are women. In the view of Dutch NGO's the extension of the exceptions Dutch social law makes for domestic workers constitute a violation of CEDAW.

***The Dutch NGO's would like to suggest the CEDAW Committee to pose the following questions:***

- What is the number of workers for which the social legislation provides an exceptive status because they are employed by a private household; how many of them are indirectly funded by public social and health schemes (WMO and AWBZ); how many of them are women; what was the effect of the introduction of the 'Services at home' scheme in 2007?
- Did the government assess whether the introduction of the 'Services at home' scheme' was in accordance with CEDAW?
- Is the government planning to include a gender impact assessment in its investigation of possibilities with a premium-free zone (5<sup>th</sup> report p. 34)?

## **Change of policies put more pressures on providers of informal care**

CEDAW articles 3, 5, 11 and 12.

The Dutch NGO's are concerned about the lack of information on the position of women who provide informal care to relatives and friends. The information on page 84 of the 5<sup>th</sup> Report of The Netherlands (under the title "*new policy aimed at voluntary action and informal care*") is not sufficient to understand and assess the situation of the providers of informal care, predominantly women. The report fails to mention that the position of providers of informal care has become more difficult over the last years.

The Netherlands have a rather complicated system for the care for the elderly, and ill or disabled people who live in their own homes. Professional household assistance is organised by local governments, on the base of the 2007 Social Support Act (WMO).

Health care at home and support /assistance aimed at participation in society for the elderly, and ill and disabled persons is covered by the Exceptional Medical Expenses Act (AWBZ). Both Laws emphasise the importance of the informal care provided by relatives, friends or neighbours over a longer period of time, the so called 'mantelzorg' (home based care). Though the position of the informal carers under both laws is different, in both situations women seem to pay the price by the threat of or by actual overburdening.

### **WMO**

Under the WMO, household assistance is only provided if there are no people in the (family) network that can or should provide informal care. Here, informal care is a 'preliminary service'. Family members or neighbours are supposed to provide care.

In their previous shadow report of 2006, the Dutch NGO's already pointed out the likely gender effects of the WMO (which were also determined in a gender impact assessment). One of them is the extra burden of unpaid work for especially women, whether being relatives, friends or neighbours, who traditionally take up the caring duties, including the unpaid home based care. When so much being caught up with these unpaid responsibilities, those women are hardly in the position to work in the official labour market as well; and if they do, they often work in small part time jobs.

Other possible gender impacts regard the position of professional care workers (see section on Domestic Workers) and the position of the persons who receive care.

### **AWBZ**

Regarding health care at home, and the support and assistance of the elderly, and ill or disabled people enabling them to participate in society, the situation is different, or at least it was.

The AWBZ finances this care and support (which does not only include care and support for the elderly, but also for children with physical or mental disabilities). The care and support can be provided by professional institutions, or it can take the form of the so called Personal Budget (PGB), which is paid to the client. With this budget, the client can buy his or her own care and support from professionals, or from (qualified) family members or friends. So under this law as it used to be, family members could be paid for their provision of extra care and support.

In 2008 however, the government decided to adjust the AWBZ. In particular the possibilities to qualify for a Personal Budget for support and assistance aimed at participation in society has been diminished strongly. One of the effects of this measure, which will be implemented from January 2009, will be that more people will have to take care of their relatives (unpaid), because the professional care is no longer affordable without public financial support.

Another effect can be that family members and friends, who now get paid for their support and care, will continue to do so unpaid. In both situations, the carers will meet negative effects on their possibilities to participate in society / to do paid work.

In a letter of March 2008<sup>1</sup>, the minister of announced that the governmental response to an advice on changes in the AWBZ would look into the possible emancipation effects. Despite this promise, the governmental Response of June 2008<sup>2</sup> paid no attention to emancipation effects whatsoever. The terms 'women', 'gender' and 'emancipation' are totally absent in the document. Parliament did not bring up the gender effects of the adjustments either, which means the changes in the law will be implemented without an assessment of the gender impacts.

***The Dutch NGO's would like to suggest the CEDAW Committee to pose the following questions:***

- What is the position of persons who provide care or support to elderly, ill or disabled family members or other relatives; what are the obstacles they meet regarding their (economic) participation in society? Is this position gender-related? Can you provide data, disaggregated by gender, age and ethnicity?
- When will the Dutch Government evaluate the gender impacts, in particular the impacts on women, of the Social Support Act (WMO)?
- Why did the government -despite its promise to do so - not assess the possible gender impacts of the changes in the Exceptional Medical Expenses Act (AWBZ) as implemented January 2009?
- What possible gender impacts of the changes of the Exceptional Medical Expenses Act (AWBZ) does the government acknowledge, both regarding the position of the informal carers and the position of the persons who receive care?

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1 Letter of the Ministry of Health to Parliament of 7 March 2008;  
<http://www.minvws.nl/kamerstukken/dmo/2008/emancipatiebeleid.asp>

2 Zeker van Zorg, nu en straks (certain of care, now and in the future); Ministry of Health, 13 June 2008. <http://www.minvws.nl/kamerstukken/lz/2008/zeker-van-zorg-nu-en-straks.asp>.

## **Equal rights in family forming and family reunification**

CEDAW Art 16

Concluding Comments 26-27, CEDAW/C/NLD/CO/4

Since 2001 the Dutch government has a policy of restricting immigration for family forming (forming a new family by marriage or relationship) and family reunification with partners from outside the European Union. The requirements become increasingly difficult and the costs for family forming and reunification are increasingly high. At the moment a Dutch or non-EU citizen living in The Netherlands has to earn a monthly income of at least 120% of the minimum wage net for family forming and 100% of the minimum wage net for family reunification. Also he or she must produce a labour contract that is still valid for at least one year.<sup>3</sup>

Since April 2006 the government introduced (first in the world) the Civic Integration Act Abroad (at a Dutch embassy): foreign partners from non-Western countries<sup>4</sup> are obliged to successfully take an exam in Dutch language and in knowledge about Dutch society before they are granted an MVV (provisional permit to enter The Netherlands), before they can apply for a (temporary) residence permit for family forming or reunification.

The government doesn't facilitate or support in any way the preparation for this exam, as, so it states, the costs of the exam are not disproportional high (i.e. € 350,-). However, additional costs are not taken into account, like courses in Dutch language or the costs of travel and accommodation to the capital of the country (often another country) in which a Dutch embassy is located.

As there is a worldwide gap between men and women concerning wages and properties, this policy has a more restrictive effect on women than it has on men.

Moreover, because in several countries women are less educated and more often illiterate, in some cases this unequal effect can be even stronger.

Recently there have been a lot of critical comments on the Dutch family forming and reunification policy, for example from Human Rights Watch<sup>5</sup> and the European Commission<sup>6</sup>. Moreover, there are already two verdicts from Dutch judges against the requirements for family forming/reunification.

One against the high income requirements in case of a woman from Sri Lanka living in The Netherlands who wanted family reunification with her husband. The other against the Civic Integration Act Abroad concerning a woman from Morocco who had failed her civic integration exam and was denied family reunification with her Moroccan husband in The Netherlands.

The government has appealed both verdicts, and consequently it will not (yet?) adapt its legislation. On the contrary, the requirements for the exam abroad were upgraded in 2008.

The policy is said to be part of integration policy, but it is also openly stated that it should prevent immigration from "importbruiden" (imported brides, synonymous for illiterate, unemancipated women mainly from Morocco and Turkey). Apart from that, the high costs and income requirements make it more difficult for women (whether native Dutch or other) than for men to bring a foreign partner to The Netherlands, since they have a much weaker position on the labour market (lower salaries, more often part-time and temporary jobs).

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<sup>3</sup> Citizens from European countries, with exception of Dutch citizen, are not subjected to all these requirements as a result of European Directive 2004/38/EC on free movement of persons within the EC

<sup>4</sup> Partners and family members with nationalities of non-EC-countries with exception of Australia, Canada, Japan, South Korea, USA and Japan,

<sup>5</sup> The Netherlands: discrimination in the name of integration. Migrants rights under the Integration Abroad Act, May 2008

<sup>6</sup> Report on the application of Directive 2003/86 on family reunification of third world country nationals, European Commission, October 2008

The number of MVV's has decreased dramatically, especially since the Civic Integration Act. The number of applications for family forming and family reunification decreased from an average of 1500 to 2000 per month to 1000 per month. And although the Dutch government states that there is no evidence that the restrictions are discriminating for women, the monitor of the Dutch Immigration and Naturalization Service (IND) proves otherwise<sup>7</sup>. In 2007 73% of the foreign partners who did the integration exam abroad had middle and higher education and two out of three is a woman. The requirements seem successful in stopping the family forming and reunification with illiterate or low educated non-Western women, but also prevents Dutch and non-EC-women in The Netherlands from family forming and reunification with foreign partners.

In September 2007 the department of Justice promised a quantitative and qualitative evaluation of the measurements concerning family forming and reunification by the research section of the department of Justice (WODC). The Parliament specifically asked to take gender into consideration in this evaluation, which was granted. The results of this evaluation were not yet available at the end of 2008.

### **Independent residence permit**

in order to obtain a permanent or independent residence permit, yet another Civic integration exam in The Netherlands is required after granting a residence permit for family forming and reunification after three years of residence permit for family forming. This requirement makes women depending more and longer on their partners.

In case of domestic violence the requirement is dropped, provided that this violence is demonstrated by means of a statement from a physician/medical counsellor, a social worker or a women's shelter.

The violence must be reported to the police, but an official charge or indictment is no longer compulsory. This is an improvement compared to former legislation.

The Dutch NGO's take the view that the presentation in the 5th Report (p. 75) is too limited and rosy. In the studies which are mentioned the fall out before applying for a permit is not taken into account. Moreover: recent figures provided by the Department of Immigration and Naturalization (IND) about the Civic integration exam abroad, suggest that there are significant gender discrepancies in the effects.

### **Modernization of Dutch migration policy (art 11)**

This policy of restricting family forming and reunification is also part of the "modernization of migration policy" that is currently developed by the Dutch government. Labour migration, especially of "kennismigranten" (high skilled migrants) is stimulated while family migration and asylum migration is to be further restricted.

The government states that there is enough attention for the specific situation of women in this new policy (special residence permits for victims of human trafficking, domestic violence and honour related violence). This indicates that women are solely noted when they are victims of crimes.

However, research indicates that also in normal labour migration to The Netherlands, there are specific gender differences: women often migrate for lower skilled labour, they earn less and are more excluded from rights than men<sup>8</sup>.

When it comes to the policy on high skilled migrants, the government has set a (high) minimum to the salary a migrant must earn in order to be granted access to The

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<sup>7</sup> See also Newsletter of Nederlands Nationaal Contact Punt, Europees Migratie Netwerk IND, nr 20, december 2007: data proof that men can more easily meet the income requirements than women...

<sup>8</sup> Staat, markt en migrant. PhD-thesis Tesseltje de Lange, Nicis Institute for Urban Research and Practice, August 2007



Netherlands.<sup>9</sup> Given the unequal pay between women and men, this policy has a disadvantageous effect on women.

The Dutch NGO's emphasize that a Gender Impact Assessment should be undertaken, also on the effects for migrant workers and highly skilled migrants.

***The Dutch NGO's would like to suggest the CEDAW Committee to request the following:***

- Can the government produce the most recent figures or data of M/F applicants for family forming/reunification and applicants for an independent residence permit?
- Can the government submit the translation of the results of the study undertaken by the WODC, before the constructive dialogue with the Committee's 45<sup>th</sup> session of January 2010?
- Is the government considering a Gender Impact Assessment about the Blueprint regarding new immigration policies?

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<sup>9</sup> Arbeidsmigratie, gender en gezin (labour migration, gender and the family), E-Quality, Information Centre, The Hague, 2007

## **Violence against women**

CEDAW Art. 2, 3.

General Recommendations 12 and 19

Like everywhere violence against women takes many forms in The Netherlands – physical, sexual, psychological and economic. The immaterial and material costs are very high.

Gender related violence is still a very persistent problem in The Netherlands.

In its 5<sup>th</sup> report the Dutch government gives an account of which policies and actions have been undertaken to combat violence against women. Dutchy NGO's conclude that some forms of violence, f.i. domestic violence, get far more attention than other forms, f.i. sexual harassment.

An integrated policy on gender related violence, which is considered a necessity<sup>10</sup>, is lacking in The Netherlands.

### **Sexual violence and sexual harassment**

In The Netherlands domestic violence is 'a hot issue' nowadays and there has been considerable progress in creating a national framework for combating domestic violence. Considerable less attention, though, is paid to sexual violence, although the prevalence and the immaterial and material costs are about the same (very high). For the public and the media sexual violence is an important issue, for the national government sexual violence seems to be 'a minor topic'. It is not as if the Dutch national government and local authorities do not act at all against sexual violence. But it is not sufficient and it is not well coordinated. There is no national action plan, there is no coordinating department, and there is no strategy.

What is needed in The Netherlands is:

- a national action plan against sexual violence and harassment and a coordinating ministry (Justice or Health)
- a network of front offices where victims and professionals can get advice and help
- a variety of services for victims (legal help, medical help, psychological help)
- a network of counseling services for perpetrators
- an integrated approach of sexual violence by police, healthcare, civil society and justice.

### **Gender & violence**

The Committee has expressed its concern (CEDAW/C/NLD/CO/4, Concluding Comments 19) about the gender-neutral formulation of policies in respect to (domestic) violence.

The Dutch government has responded by giving an assignment to an expert on gender related violence. This expert has recently finished her report<sup>11</sup>. It is not yet clear when the government will respond to the findings and conclusions of the experts' report.

In its 5<sup>th</sup> report to CEDAW the government has announced that it will organize interdepartmental information sessions on this subject.

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<sup>10</sup> Resolution to the UNGA on the stepping-up of the combating of all forms of violence against women (A/RES/61/143), an initiative of France and The Netherlands

<sup>11</sup> *De aanpak van gender gerelateerd geweld in de privé sfeer, aanknopingspunten voor een meer genderbewuste aanpak van huislijk geweld* (Combating gender related violence in the private sphere, points of importance for gender sensitive handling of domestic violence), M. de Boer, PoWR 2008.

***The Dutch NGO's would like to suggest the CEDAW Committee to pose the following questions:***

- Resolution (A/RES/61/143) asks for an integrated policy on gender related violence to connect the different specific forms and programs and to present an overall view on the prevalence and interconnectedness of mental, sexual, physical and economical gender related violence. When can we expect such an integrated policy?
- Sexual violence and harassment are as costly (immaterial and material) as domestic violence. Therefore sexual violence should be combated with the same effort as domestic violence. When can we expect a cohesive strategy on the combating of sexual violence/harassment? (Whether the combating of sexual violence and harassment demands a specific approach or needs to be integrated into the national strategy on domestic violence, needs to be explored).
- The consulted expert on gender related violence has recently finished her report. When will the government give a reaction to the experts' report? When will the government organize the interdepartmental information sessions on this subject which it has been announced in its 5<sup>th</sup> report?

## **Prostitution and trafficking in women**

Concluding Comments 21-24 (CEDAW/C/NLD/CO/4)

In 2007 a second evaluation of the lifting of the ban on brothels took place.<sup>12</sup> The evaluation focused on three aspects: municipal policies, illegal and prohibited forms of prostitution (including involuntary prostitution and prostitution by minors) and the social position of prostitutes. Below we comment on the second and third aspect<sup>13</sup>.

### **Illegal and prohibited forms of prostitution**

The researchers of the evaluation report conclude:

- a decrease of the number of prostitutes without the required residence and work permit working in the regulated and licensed sector
- a decrease of 'offerings' of foreign women to brothel keepers by third parties/intermediaries
- scarcely any underage prostitutes were found working in the licensed sector
- no indications of a growing large illegal circuit
- some indications of involuntary prostitution in the licensed sector, but to a minor degree
- the awareness of brothel keepers of the risks of trafficking and their unwillingness to be involved in such practices has increased
- a slight increase of the number of reports of (victims of) trafficking (according to data of the police and the Foundation Against Trafficking in Women (now Comensha)). This increase is mainly attributed to the intensified attention for trafficking in human beings.

The conclusions on the incidence of trafficking in the regulated sector were put into question by a recent criminal investigation into a large trafficking network, which showed that the majority of their victims worked in the licensed sector. At the same time, this underlined one of the problems identified in the evaluation, notably that policies predominantly are directed at brothel owners and the regulation of sex businesses, whereas a major part of the violence and coercion are exercised by pimps operating on the background outside the business, without the knowledge of the operator of the sex business.

### **No insight in the position of foreign women engaged in prostitution**

Whereas the evaluation provides a good insight in the developments in the regulated sex sector, much less insight exists in the unregulated and illegal sectors.

The evaluation does not give insight in the impact of the change of law on the position of migrant prostitutes, their health risks<sup>14</sup> and their vulnerability to violence and exploitation. Also the effects of the exclusion of migrant prostitutes from working legally have not been evaluated.

In a letter to Parliament, dated 16 May 2008, the responsible minister justifies the exclusion of migrant prostitutes from the legal prostitution sector by referring to the risks of foreign prostitutes becoming a victim of trafficking. However, it has not been investigated whether their exclusion and the subsequent lack of legal protection does not increase, rather than decrease, their vulnerability to trafficking and other forms of exploitation and violence. In this regard, the evaluation observes that the more strict controls of the regulated sector lead to the use of false passports, as a result of which migrant women are more dependent on

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<sup>12</sup> *Prostitutie in Nederland na opheffing van het bordeelverbod* (Prostitution in The Netherlands after the abolition of the ban on brothels), A.L. Daalder, WODC 2007.

<sup>13</sup> In our final NGO report (on behalf of the committee's 45th session) municipal policies will be elaborated.

<sup>14</sup> Contrary to what the government's 5<sup>th</sup> report suggests (p. 61), only the health situation of prostitutes in the licensed sector was investigated, which excludes foreign women engaged in prostitution/women without a residence permit as they are excluded from working in the licensed sector.

traffickers. It is also noted that part of the migrant women previously working in The Netherlands, probably moved to neighbouring countries as a result of the change of law and the increased control.

### **No improvement of the position of prostitutes**

According to the evaluation study the position of prostitutes has hardly or not improved since the change of law. The labour relationships in the sex industry are still unclear and the legal (labour) position of prostitutes is still as poor as it was.

The researchers expect that this will not improve as a matter of course, but will need active policies. They note that such policies are blatantly lacking: little has been done to improve the labour and social position of prostitutes and no measures have been taken to inform and educate prostitutes on labour law, social security, tax legislation and the risks of exploitation. Other sources confirm that the introduction of the licensing system has hardly taken into account the needs and interests of prostitutes, such as the protection of their privacy. Moreover, as a result of the way the licensing system is implemented, it has become more difficult instead of more easy for prostitutes to work independently and/or run their own business.

This also undermines the other aims of the change of law, notably the regulation of consensual adult prostitution and the combat of involuntary prostitution and other abuses.

Although the responsible minister acknowledges that improvement of the position of prostitutes is an important element of the effective combat of abuses in the sex industry, the recently proposed Prostitution Act introduces a number of measures that risk to even further undermine the position of prostitutes.

For example, under the justification of combating trafficking, the Bill aims to introduce mandatory registration for independent prostitutes with the local authorities,<sup>15</sup> along with the criminalisation of clients who visit non-registered prostitutes, without considering the consequences this may have for the protection of their privacy and safety<sup>16</sup>. Prostitutes who work in brothels must be registered through the brothel keeper.

This will add to the power that both the brothel keeper and local authorities can exercise over the prostitute. When prostitutes refuse to register they are punishable and risk ending up with a criminal record, which is not particularly conducive to exit prostitution and build up another career. And if a prostitute complies with the mandatory registration, what will be the consequences of her registration as a prostitute for her future career when she decides to exit prostitution?

It may be expected that mandatory registration will lead to a flight to the illegal sex sector, not only of migrant but also of Dutch sex workers. This seriously undermines an effective combat of trafficking and other forms of exploitation and abuse of women, while at the same time it is completely unclear how registration of prostitutes helps to protect them against violence and abuse.

### **Position of victims of trafficking in women (B9-regulation)**

Since 2008 (foreign) victims of trafficking also qualify for a temporary residence permit and the attached assistance and protection if they do not press charges but are willing to cooperate with the (criminal) authorities in other ways. Also the possibilities for granting victims of trafficking permanent residence on humanitarian grounds have been extended. These are definitely positive developments, along with other measures to more effectively combat trafficking.

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<sup>15</sup> In addition to the existing registration of sex *businesses* (but not of individual prostitutes).

<sup>16</sup> Since January 2008 self employed and free lance working prostitutes are already obliged to register with the local Chamber of Commerce, including their home address in a publicly accessible database. This means that clients and acquaintances but also criminals can find out their private address, which makes them extremely vulnerable to violence and exploitation. For this reason many self employed prostitutes prefer to work 'illegally'.

However, access to assistance and protection continues to be dependent of the capacity and willingness of the victim to cooperate in the investigation and prosecution of their traffickers. Many victims are not able or willing to do so for various reasons. This means that a considerable number of victims of trafficking are still being excluded from help and protection.

Moreover, a recent research<sup>17</sup> shows that the police fails to adequately identify victims and that a considerable number of victims are illegitimately and in violation with the B9-regulation held in alien's detention, without access to the assistance and protection to which they are entitled. In a considerable number of cases the police refused to take down the victim's report, refused to grant the reflection period or let the victim wait in detention for weeks or even longer before coming into action.

### **Role of NGO's in combating trafficking**

From February 2008 a Task Force is installed with the assignment to develop more effective policy and actions against trafficking (as was recommended by the Dutch National Rapporteur on Trafficking in Human Beings, 5<sup>th</sup> report, 2007). All relevant actors are represented in this Taskforce, except NGO's, despite the fact that the Rapporteur has stressed the importance of NGO membership in her 6<sup>th</sup> Report of 2008.

NGO's, working intensively with victims of trafficking and forced prostitution, would contribute essentially to the Task Force's mission.

### ***The Dutch NGO's would like to suggest the following questions to the CEDAW Committee (with reference to concluding comments 21-24, CEDAW/C/NLD/CO/4):***

- Can the government explain which measures it will take to improve the social and labour position of prostitutes, to support their (labour) emancipation and to facilitate them to work on a self employed basis and/or to run their own business, independent of brothel keepers or other third parties, while taking into account the protection of their privacy and safety?
- Is the government willing to carry out an assessment of the impact of the proposed Prostitution Act on the position of prostitutes, their possibilities to work independently and the protection of their privacy and safety?
- Will the government, as requested by the Committee in its previous Concluding Comments, carry out an assessment of the impact of the law and of the exclusion of migrant prostitutes from working in the legal sex sector, on the position of foreign women, their health risks and their vulnerability to violence and exploitation?
- Does the government intent, as called for by the Committee in its previous Concluding Comments, to amend the current B9-regulation on victims of trafficking in order to extend temporary protection visas, reintegration and support services to all victims of trafficking, including those who are unable or unwilling to cooperate in the investigation and prosecution of traffickers?<sup>18</sup>

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<sup>17</sup> *Uitgebuut en in de bak, slachtoffers van mensenhandel in vreemdelingendetentie* (Exploited and detained, victims of trafficking in aliens detention), Amsterdam: Bonded Labour in The Netherlands 2009.

<sup>18</sup> The government's 5<sup>th</sup> report mistakenly talks about victims of human smuggling and the prosecution of human smugglers (p. 59); we assume the government means victims of trafficking in human beings.

## **The Status of CEDAW and the Question of Direct Effect (Applicability within the domestic legal order)**

CEDAW/C/NLD/CO/4, Concluding Comments 8, 11, 12, 13, 14 and 44.

The new government included in its Coalition Agreement (February 2007) and in its Policy Statement paragraphs the promotion of gender equality (5<sup>th</sup> report p. 6). On several occasions the Minister responsible for the coordination of equality policies and gender mainstreaming, discussed the progress of the implementation of CEDAW with the parliament.

The Dutch NGO's note that this current government take Women's Rights more seriously than the previous government. The fact that the 5<sup>th</sup> Report was published in time is commendable, as is the fact that the 5<sup>th</sup> report is more comprehensive than the previous one. Notwithstanding this appreciation the Dutch NGO's remain to be concerned about the views of the Dutch government with respect to the Status of CEDAW and the Status of the CEDAW Committee and its Concluding Comments. The Dutch NGO's present below some examples.

### **Promotion of knowledge about CEDAW and wide dissemination**

The government suggests in its 5<sup>th</sup> report that making information available via the internet and translations into Dutch, and sending copies and summaries to the parliament and all Ministers, is a thorough follow-up of the recommendations of the Committee (p. 10 and 11). The Dutch NGO's think more efforts are appropriate. The summaries are sloppy, to say it friendly. Moreover the information on the website [www.emancipatieweb.nl](http://www.emancipatieweb.nl) is difficult to locate. CEDAW is not a specific subject on the homepage, the search engine is not very adequate. The main objection however, is that one first has to *know* about CEDAW, its status and obligation following from that, before one can start looking for relevant information. In the view of the Dutch NGO's this justifies a more active approach by the government. Most judges, public prosecutors and lawyers are not familiar with CEDAW and it is not part and parcel of the specialised training courses for these professions. The Dutch NGO's fail to see why the publication of Recommendations and the Views of the Committee in The Netherlands is first of all a matter of private initiative (p. 11): it is the State (or the government) who is responsible as party to CEDAW to meet its obligation to the Convention.

### **Optional Protocol; individual complaints**

Given the Dutch legal system, the government in itself is correct by stating that the question whether a stipulation of CEDAW binds everyone is, in final instance, determined by Dutch courts in individual cases.

By signing the Optional Protocol however, the government acknowledged the individual right of complaint to the Committee, and therefore the government should attach a certain importance to the Views adopted by the Committee.

In all three individual complaints submitted to the Committee, the State Party emphasised the inadmissibility of the communication, in **two** of the cases with success. The first case (Communication No. 3/2004) however, was found admissible by the Committee. (In the consideration of the merits of the communication the Committee decided that the facts did not reveal a violation of article 11, paragraph 2 (b) of the Convention.)

Nevertheless the government wrote to the parliament, in a follow up letter to the letter of 5 November 2007 (Appendix 5) that **all three** individual complaints had been found *inadmissible*. In the view of the Dutch NGO's this is not a minor detail, because the effect is that the government did not have to elaborate on the Committee's Views in paragraph 10.3 and 10.4 on the Aim and the obligations for State Parties of Article 11 paragraph 2.

## **Maternity leave with pay for self employed women and women entrepreneurs**

CEDAW Article 11 paragraph 2, Concluding Comments 29 and 30

The 5<sup>th</sup> report describes on p. 49 that effective from June 2008, a Public Maternity Act for self employed women has been introduced. The suggestion is that this happened in according with the recommendations of the Committee.

The truth is that neither CEDAW, nor the Concluding Comments or the position of the Committee were ever mentioned in the Bill nor the debate in parliament. Moreover, the report does not explain why the right to a maternity allowance was not *reinstated* as the Committee had called for in Concluding Comment para 30. Some 60.000 self employed women and female entrepreneurs did not receive the maternity allowance between 2004 (the cancellation of previous maternity benefits) and the new Act in 2008.

In a letter to Dutch NGO's dated 10 December 2008 (sent to the parliament as well) the government states that it does not agree to the opinion that CEDAW prescribes the obligation to ensure a public maternity allowance for self employed women and female entrepreneurs. According to jurisprudence there is no obligation to introduce such allowances, is the government's opinion, not mentioning the Committee's Views with regard to Communication No. 3/2004 in paragraph 10.3 and 10.4 on the Aim and the Obligations for State Parties of Article 11 paragraph 2, nor the Committee's Concluding Comments. The Dutch government refers to the Court's Verdict (25 July 2007) in which the court held that CEDAW does not prescribe this maternity allowance. The court did not pay any attention to both CEDAW documents attached to the proceedings by the solicitor of the parties and the seven women contesting the governments' right to cancel the public maternity allowance for women.

In the proceedings the solicitor representing the State argued that article 11 paragraph 2 sub b is not applicable for self employed women and female entrepreneurs, denouncing both documents of the Committee ("only a view"). The court agreed to that, but whether this will be upheld by the High Court remains to be seen (expected October 2009).

### ***The Dutch NGO's would like to suggest the CEDAW Committee to request:***

- a translation of both letters to the Parliament dated 10 December 2008, on the subject of the 5<sup>th</sup> Report, the legal application of CEDAW, and the Monitor of the Dutch CEDAW Network;
- a translation of the paragraphs relating to CEDAW in the documents in the High Court Proceedings
- a translation of the Verdict of the High Court as soon as it is publicised.