



JOINING FORCES TO BREAK THE CIRCLE OF VIOLENCE AGAINST WOMEN

Dutch NGO Shadow Report on the implementation of
the Council of Europe Convention on preventing and combatting
violence against women and domestic violence
(Istanbul Convention)

Dutch CEDAW Network
October 2018

PREFACE

This shadow report has been compiled on behalf of the *Dutch CEDAW-Network* by a team consisting of NGOs and independent women's rights experts in the Netherlands. Many other NGO's, universities, research and expert institutions connected to the Network also lent their expertise. The consultation process started with two expert meetings on resp. 27 June and 4 July 2018.

The purpose of this report is to contribute to the dialogue between representatives of the European part of the Kingdom of the Netherlands and GREVIO, the Group of Experts on action against violence against women and domestic violence, about the first baseline evaluation of the implementation of the Council of Europe Convention on preventing and combatting violence against women and domestic violence (Istanbul Convention) in the European part of the Kingdom of the Netherlands.

We would like to express our appreciation for the Dutch Ministry of Public Health, Welfare & Sports for providing the funds for the process by which the shadow report was produced. We would like to stress that this has not had any bearing on its content.

The report aims to give a concise overview with respect to all forms of violence against women and domestic violence and has been signed by a large number of Dutch NGOs and CSOs. In addition to signing the joint NGO-report the *Transgender Network* (TNN) submitted its own report, which discusses more in-depth violence against transgenders. The national *Network of Women's Shelters*, which is part of the *Dutch Federation of Shelters*, contributed with their own report which has been integrated in the joint report.

The report includes a section on the exclusion of the Caribbean part of The Netherlands from the application of the Convention. This section was endorsed by *Fundashon Sentro di dama* (SEDA) (Curacao), *Fundashon muhé den dificultat* (Aruba), *Steering Committee Curacao*, *Stichting Zorg en Herstel* (Curacao), *CAFRA* (Curacao), and *DEDIMA* (Curacao).

The shadow report was endorsed by 52 organisations working in the Dutch part of the Kingdom of the Netherlands. A list of the NGOs that signed the shadow report is included hereafter.

The Hague, 30 October 2018

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52 Dutch NGOs endorsed this shadow report:

- Aidsfonds/Soa Aids Nederland (Aids Fund/STI AIDS Netherlands)
- Art. 1/RADAR Anti-discrimination Agency
- Atria, Kennisinstituut voor emancipatie en vrouwengeschiedenis (Institute on Gender Equality and Women's History)
- Bureau Clara Wichmann (Women's Rights Fund Clara Wichmann)
- CKM, Centre against Child Trafficking and Human Trafficking
- COC Nederland (COC Netherlands), Advocacy for the rights of lesbian women, gay men, bisexuals, transgenders and intersex persons
- Defence for Children - ECPAT
- Dokters van de Wereld (Médecins du Monde the Netherlands)
- Emancipator, voor mannen en emancipatie (Men and Gender justice)
- Fairwork, Support of victims of labour exploitation in the Netherlands
- Federatie Opvang (Federation of Shelters)
- Femmes for Freedom, Defending Girls and Women's Rights
- Fier, Expertise and treatment centre for children, young people and adults who are confronted with domestic violence, child abuse, sexual violence and human trafficking
- FNV (Dutch Trade Union Confederation)
- FNV Vrouw (FNV Women's Union)
- GWI-NL, Graduate Women International Netherlands
- HIVOS (Humanist Institute for Co-operation with Developing Countries)
- HVO-Querido, Amsterdam Coordination Centre on Human Trafficking (ACM) and Prostitution & Health Centre
- Johannes Wier Foundation for Health Care and Human Rights
- Kezban, Prevention and combatting of domestic violence in migrant communities
- Landelijke werkgroep Mudawwanah (National Working Group Mudawwanah)
- LOS Stichting Landelijk Ongedocumenteerden Steunpunt (National Support Centre Undocumented Migrants)
- Malak, social support for participation, self reliance and emancipation
- MPV, Muslims for Progressive Values Nederland (Alliance of Inclusive Muslims)
- MVVN, Marokkaanse Vrouwen Vereniging Nederland (Moroccan Women's Association Netherlands)
- Nederland Suriname Antillen Gendervraagstukken (Netherlands Suriname Antilles Gender Issues)
- Nederlandse Vereniging voor Vrouwenbelangen, Vrouwenarbeid en Gelijk Staatsburgerschap (Dutch Association for Women's Interests, Women's Work and Equal Citizenship)
- NisaforNisa (Womenforwomen)
- NJCM (Dutch Section of the International Commission of Jurists)
- NNID, Nederlands Netwerk Intersekse/DSD (Dutch Network for sex diversity)
- NVR, Nederlandse Vrouwen Raad (Netherlands Council of Women)
- Oudere Vrouwenennetwerk NL (Dutch Network of Older Women)
- Passage, christelijk-maatschappelijk vrouwenbeweging (Christian-Social Women's Movement)
- PIC, Prostitutie Informatie Centrum (Prostitution Information Center)
- RESPECT Network (Network of migrant domestic workers' organisations)
- Rutgers, Kenniscentrum seksualiteit (Expertise centre on sexual and reproductive health and rights)

- Sex Work Expertise, Platform for the improvement of the position of sex workers
- SHOP, Support and Shelter Prostitution and Human Trafficking
- SONPPCAN (Somali Network for Prevention and Protection against Child Abuse and Neglect)
- Tiye International, umbrella NGO of 21 black, migrant and refugee organisations in the Netherlands
- Transgender Netwerk Nederland (TNN) (Transgender Network Netherlands)
- VAM, Stichting Vrouwen en Arbeidsmarkt (Foundation Women and the Labour Market)
- Vereniging Platform Vrouwen & Duurzame Vrede (Association Women & Sustainable Peace)
- VluchtelingenWerk Nederland (Dutch Council for Refugees)
- VNVA, Vereniging van Nederlandse Vrouwelijke Artsen (Association of Dutch Female Physicians)
- Vobis), Creating space and opportunities for everybody
- Vrouwenbelangen (Dutch Association for Women's Interests, Women's Work and Equal Citizenship)
- VTU Vrouwen tegen Uitzetting (Women against Deportation)
- VVR, Vereniging Vrouw en Recht Clara Wichmann (Association Women and Law Clara Wichmann)
- WO=MEN, Dutch Gender Platform
- WOMEN Inc.
- Zijweg, support and advocacy of women and children who face of have faced (ex)partner violence

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INTRODUCTION

According to research by the European Union Agency for Fundamental Rights (FRA), almost half (45%) of the Dutch women interviewed for the study had experienced a form of physical or sexual violence from the age of 15 onwards.¹² In the 28 EU-member states, the average is 33%. Violent incidents of all levels of seriousness are taken into account in these figures: they refer not only to incidents but also to repeated and structural violence, violence by known and unknown perpetrators, and violence both within domestic circles and committed elsewhere. Perpetrators of violence are more often men than women. In cases of violence by partners or ex-partners, the perpetrators are almost always men. According to the EU research, a negligibly small portion of partner or ex-partner violence is committed by female perpetrators. In cases of violence by someone other than the partner or ex-partner, more than three quarters (77%) of the Dutch women interviewed state that the perpetrator was a man (EU average: 72%). One out of six (16%) Dutch women report a female perpetrator (EU average: 20%). In the other cases, the violence concerns both male and female perpetrator(s), or the gender of the perpetrator is unknown.

Although the NGOs acknowledge and appreciate the importance the Dutch government places on the prevention and combatting of violence against women and domestic violence, they also identify fundamental bottlenecks that could endanger the effectiveness of policies and thereby the protection of victims of violence. The most significant bottlenecks are:

1. The government, as the primary institution responsible, does not sufficiently fulfil the role of steering, monitoring and reviewing policies and leaves too much to be decided by the municipalities.
2. As a result, there are major regional and local differences in the protection of victims and the approach towards combatting violence, as well as in the level of skills at the different institutions implementing governmental policies in combatting violence. These differences are unacceptable.
3. The government pursues a gender-neutral policy. An underlying comprehensive gender-analysis of violence against women is missing and consequently a systematic and targeted approach towards its root causes.
4. A structural lack of segregated data makes it difficult to justify why certain policy choices have been made and to evaluate their effectiveness.
5. Specific groups and certain forms of violence receive little to no attention, or the attention they do receive is not effective because other policies and interests take precedent to those combatting violence.

After two general remarks, this shadow report follows the structure of the Istanbul Convention in seven Chapters and 70 paragraphs.

GENERAL REMARKS

EXCLUSION OF THE DUTCH CARIBBEAN FROM THE APPLICATION OF THE CONVENTION

When the Convention was ratified, the Kingdom of the Netherlands declared that it would only apply

¹ European Union Agency for Fundamental Rights (FRA) (2014). *Violence against women*. The data for the Netherlands are discussed in: Römkens, Renée et al. (2014), *Violence against women. European data in Dutch context*, p. 17. The FRA-research is the first representative large-scale survey into the nature and extent of violence against women in the 28 Member States of the EU. The research only concerned the European part of the Kingdom of the Netherlands.

² In the FRA study, physical violence means: hitting, pushing, throwing an object at someone, pulling hair, hitting it with a fist or a hard object, kicking, setting fire, trying to suffocate or strangle, stabbing with a sharp object or weapon, shooting with a firearm, striking someone's head against something. Sexual violence is understood as: rape, attempted rape, forcing to participate in sexual acts and enforcing sexual activities under threat.

to the European part of the Kingdom, thereby excluding the Dutch Caribbean from its application. During the parliamentary debate about the ratification, the Minister stated that the Dutch Caribbean could not yet meet the obligations of the Convention due to a lack of reporting structure, safe shelters, adequate support services, information and awareness.³ The Government acknowledged that it was important that the Convention would also apply to the Caribbean part of the Kingdom and committed itself to consider in 2016 what legislation and additional measures would be needed and how long it would take to extend the Convention to the Dutch Caribbean.⁴ In 2016, however, still no timeframe was given.

The NGOs consider the exclusion of the Dutch Caribbean undesirable. This standpoint is supported by the recent report of the Advisory Council on International Affairs (AIV).⁵ All parties agree that domestic violence constitutes a serious and urgent problem. Moreover, CEDAW, on which the Istanbul Convention builds, has applied to the Dutch Caribbean since 1991. Hence, the Kingdom of the Netherlands already has the international obligation to prevent and combat violence against women, including domestic violence, in the Caribbean part of the Kingdom of the Netherlands. Therefore, the NGOs question the validity of the aforementioned reasons. The NGOs would also like to stress that the so-called BES islands of Bonaire, St Eustatius and Saba, unlike the other islands of the Caribbean part of the Kingdom of the Netherlands, have the status of ‘special municipalities’ that operate under Dutch law and as such are part of The Netherlands. The NGOs question whether excluding Dutch public bodies from the application of the Convention is not contrary to its objective and purpose as mentioned in its explanatory report.

The NGOs would like to know which steps the government has taken to address the aforementioned problems, the timeframe it envisages to do so and when it expects to declare the Convention applicable to the entire Kingdom of the Netherlands. The NGOs suggest the Committee to urge the Netherlands to cover the entire Kingdom, including the Caribbean part, in its next report.

ABSENCE OF OPERATIONAL GOALS, CONCRETE BENCHMARKS AND IMPACT MEASUREMENT

In its report, the government describes a range of initiatives, projects, guidelines, tools, etc. to address violence against women and domestic violence. However, clear operational goals and concrete, measurable benchmarks are missing, as is insight into the results of the various projects. In II.3 (*data collection and research*), for example, various studies are listed. In many cases, it is not clear what happened to the results of these studies, or whether the actions undertaken based on the results have actually led to improvement.

As defined by the OECD-DAC, evaluation is the ‘systematic and objective assessment of an ongoing or completed project, programme or policy, its design, implementation and results.’ An evaluation provides an objective and timely assessment of the performance of a strategy, a policy, a programme, project or any intervention. It identifies and explains not only what changes have occurred, but critically why these changes have occurred. Evaluations follow rigorous methodologies based on intervention logic. An evaluation should look at the outcome of policies and examine the reasons why changes occur, rather than just providing an overview of outputs, as is currently the case in the Netherlands’ reporting.

The NGOs recommend that the government set concrete targets and benchmarks for the various initiatives, evaluate the actual results and indicate how the results will be followed up upon. The NGOs suggest that the Committee encourages the government to apply the evaluation standards of the OECD DAC in its next reports.

³ Regioplan (2014), *De aanpak van huiselijk geweld op de BES eilanden, Eindrapport*, (Policy against domestic violence on the BES islands), Amsterdam.

⁴ Parliamentary Papers II, 2014/15, 91, item 9.

⁵ See also the recent report of the Advisory Council On International Affairs (AIV), Aiv-Advies No. 107, *Fundamental Rights In The Kingdom of The Netherlands: Equivalent Protection In All Parts of The Kingdom*. Available at <https://aiv-advies.nl/9rx>.

CHAPTER I - PURPOSES, DEFINITIONS, EQUALITY AND NON-DISCRIMINATION, GENERAL OBLIGATIONS

ART. 4.3: NON-DISCRIMINATION

1. Difficulties for several groups of victims in accessing their rights

Art. 4.3 requires that the Convention be implemented without discrimination on any grounds, including migrant, refugee or other status. There are several groups of women, however, who face difficulties in gaining adequate access to protection and support. This includes undocumented women (*see section 32, 45 and 61*), women with a dependent residence permit (*see section 23, 43 and 68*), refugee women (*see section 23, 37, 38, 39 and 49*) and women residents who were abandoned in their family's country of origin and have managed to return to the Netherlands (*see section 30 and 36*), as well as sex workers (*see section 6 and 61*).

ART. 5: STATE OBLIGATIONS AND DUE DILIGENCE

2. Lack of redress for victims of forced labour in Catholic charities

Recent investigative journalism revealed that between 1860 and 1973, at least 15,000 girls and women were subjected to forced labour and other forms of violence, including rape, in the laundries and sewing ateliers of the Catholic charity institutions operated by the Sisters of the Good Shepherd in the Netherlands.⁶ Until the mid-seventies girls were placed in these institutions by child protection agencies and guardian institutions under the responsibility of the Ministry of Justice. The girls and women had to perform productive labour for various commercial companies. They were forbidden to talk to each other, held prisoner and sedated if they resisted. If they managed to escape, they were forcibly returned by the police and punished. Hundreds of girls died under these harsh conditions. The Deetman Commission, which investigated sexual abuse in the Catholic church, did not investigate this forced labour although it was asked to do so by the organisation representing the victims, who are now between the ages of 57 and 87. Unlike the Irish government and the NGOs, Dutch government holds the opinion that new research is not necessary.⁷

The NGOs urgently recommend that the government conducts an independent in-depth investigation into the nature and scale of exploitation of girls and women in these institutions, the impact on their lives and the role of the state, and to ensure that the victims receive justice, including recognition, compensation and redress.

ART. 6: GENDER-SENSITIVE POLICIES

3. Lack of specific policies on violence against women and of impact assessments

As stated in its report (*I.2 and V*), the government does not have a specific policy on violence against women, despite its obligation to do so under both the Convention and CEDAW. Violence against women is considered a form of 'violence in dependency relations', a rather limited interpretation in the eyes of the NGOs and members of the CEDAW Committee. As a result, a comprehensive analysis of violence against women is missing, as is a coherent, targeted policy to address its causes. Moreover, there is no coherent policy on protective factors in cases of domestic violence and how these factors can be strengthened. This ought to be imperative given the risks to the victims' safety. A third example is the failure of child protection agencies and the courts to take the history of domestic violence into account in determining parental custody and arrangements for parental access after divorce (*see section 50*).

The problem is confirmed by research. One of the studies quoted in the government report (*II.3.2*) concludes that "*Interventions in the Netherlands often lack a clear and systematic view on the concrete effects of gender-based differences and social inequalities between men and women on relationships*

⁶ E.g. NRC, 23 May & 14 July 2018 <https://www.nrc.nl/nieuws/2018/07/13/de-meisjes-van-de-goede-herder-2-a1609956>, (news article 'The girls of the Good Shepherd').

⁷ Parliamentary Papers II 34 775 VI nr. 112.

and family relations.”

Lack of understanding of the meaning of gender-sensitive policies

Both on the national and local level, there is a lack of understanding of the meaning of gender-sensitive policies. This does *not* mean, as the government appears to think, that policies should not be aimed at all victims of violence in all forms of dependency relations (1.2) or that policies should only be aimed at female victims of violence. It also does not mean that policies should not be allowed to make a distinction as to gender or any of the other discrimination grounds. However, it does mean that (also) violence in ‘dependency situations’ is not ‘gender neutral’, whether it concerns domestic violence, child abuse, abuse of the elderly or abuse in institutions. Gender-sensitive policies not only take the type of violence into account, but also the specific context in which the violence takes place, the perpetrator-victim relationship, the role of (concealed) power, coercion and control throughout the process of violence, and the distinct consequences and impact of violence on different groups of women and men.

Without gender-sensitive analysis, an effective policy on violence against women is not possible

The NGOs welcome the 2013 gender scan on domestic violence, the resulting gender toolkit and the recognition of the role of gender in partner violence in the recent action programme on Domestic Violence and Child Abuse ‘*Violence doesn’t belong at home*’ (‘*Geweld hoort nergens thuis*’) (1.2). However, the gender scan has only been applied to partner violence and not to other types of gender-based violence, such as sexual violence. Remarkably, women are not mentioned as a specific risk group in the action programme, even though police registration shows that 90% of the perpetrators of domestic violence are men and that in three-quarters of the incidences the victim is a woman.⁸

Without gender-specific analysis and policy monitoring, it is not possible to implement targeted policies against violence against women, nor is it possible to determine the effectiveness of such policies. For starters, it is unclear what specific policies the government pursues to address violence against women and domestic violence, as all policies are part of the broad category of ‘violence in relations of dependency’. Illustrative is the fact that most of the initiatives and projects that the government sums up under ‘prevention’ (but also under ‘protection and support’) speak about ‘people’, ‘citizens’, ‘young people’, ‘migrants’ or ‘the public’ in a general sense, as if violence against women and domestic violence are gender-neutral phenomena unrelated to traditional gender roles and the unequal power relationship between women and men. Some concrete suggestions for the integration of a gender perspective can be found in a follow-up research to the gender scan, which is targeted at the prevention of intergenerational violence.⁹

During the 2016 Constructive Dialogue, the CEDAW Committee asked once again how domestic violence can be effectively combatted without a gender-specific analysis. In its Concluding Observations, CEDAW recommended that the government “*revise the policy on domestic violence in order to replace its gender-neutral approach with a gender-sensitive one that focuses on identification of the gender aspects of domestic violence.*”¹⁰

The NGOs recommend that the government develop gender-sensitive policies based on a gender-specific analysis of all forms of violence against women and systematically monitor and evaluate the gender-specific effects of policies on different groups of women. They also strongly recommend the appointment of a National Rapporteur on Violence against Women and Domestic Violence, similar to the National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children¹¹.

⁸ Ferwerda, H. et al (2013), *Kijk... dan zie je het. Huiselijk geweld geteld en verdiept, Cijfers 2010 t/m 2012* (report facts and figures domestic violence 2010-2012), Arnhem: Bureau Beke.

⁹ Atria et al (2016), *English summary:*

http://www.preventieintergenerationeelgeweld.nl/5218_Preventie_intergenerationeel_geweld_Nederland_EU_SAMENVA_TTING.pdf (prevention of intergenerational violence Netherlands)

¹⁰ CEDAW/C/NLD/CO/6, section 24 e.

¹¹ The National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children is an independent body financed by the government. See government report p. 12

CHAPTER II – INTEGRATED POLICIES AND DATA COLLECTION

ART. 7: COMPREHENSIVE & COORDINATED POLICIES THAT PLACE THE RIGHTS OF VICTIMS IN THE CENTRE

4. Shift in focus on specific forms of violence against women

Without a specific policy on violence against women, there is no comprehensive, coherent and coordinated policy to address all forms of violence, as covered by the Convention. Recent years, e.g., have seen a new focus on violence against LGBTI-persons (mainly male) and the elderly (mainly female), whereas following the merger of the centres for domestic violence and child abuse into one organisation, called 'Safe at Home' ('Veilig Thuis'), attention shifted from domestic violence to child abuse. Regarding the latter, the NGOs share the concern expressed by the CEDAW Committee in its 2016 Concluding Observations¹² that the increased focus on child abuse has had a negative impact on the attention for the safety, rights and needs of women.

The NGOs recommend that the government develop a comprehensive action plan which addresses all forms of violence against women. They also recommend investigating the impact that the merger of the centres for domestic violence and child abuse into the new 'Safe at Home' organisation has had on the attention for domestic violence and the safety and needs of victims.

5. Insufficient power and competencies for coherent management of policies

As indicated in the government report (II.1.2), the Ministry of Public Health, Welfare & Sports (HW&S) is responsible for the coordination of policies related to domestic violence and violence against women. The Ministry of HW&S, however, has insufficient power and competencies vis-à-vis other ministries and municipalities to ensure integrated, comprehensive and coordinated policies at the national and local level. The Ministry of Social Affairs and Employment is responsible for policies with respect to sexual harassment and racism in the workplace; the Ministry of Education is responsible for LGBTI-issues and the empowerment of women. Migration policies of the Ministry of Justice & Safety interfere with prevention and protection policies against domestic and sexual violence against women etc. Examples will be described later in this shadow report (see section 17, 29, 32, 45 and 68).

Similar problems exist at the local level, for instance regarding the provision of shelter, specialised support services and aftercare. There is no national system for quality control of the shelters, nor is there a mechanism to systematically monitor the effectiveness and results of policies on the local and national level.

In its coordinating role, the Ministry of HW&S deploys commendable initiatives, such as facilitating, supporting, stimulating cooperation, funding projects, developing tools, and organising expert meetings. These might all qualify as carrot, while the stick is lacking.

Decentralisation has caused major differences between municipalities

As mentioned in the government report (II.1.1), the responsibility for the provision of protection and support to victims of domestic violence and child abuse has been decentralised to the municipalities under the 2015 Social Support Act (Wmo2015). Within the legal framework, municipalities can make their own policies and set their own priorities. This has led to major differences between municipalities in the availability and quality of specialised support services, shelter and aftercare. Policies on domestic violence and child abuse, the quality and availability of services and the organisation of the infrastructure, such as the 'Safe at Home' centres, may differ from region to region. The expertise of local teams is often limited and much of the existing expertise got lost due to the decentralisation. Knowledge of applicable laws and regulations, as well as their correct application, varies greatly among local teams.

The NGOs strongly recommend that the national government take the lead in bridging municipal differences in the availability and quality of support services, shelter and after care and develop a comprehensive nationwide action plan with clear goals, benchmarks and timeframes, including

¹² CEDAW/C/NLD/CO/6, section 23 d.

a system to monitor and evaluate the effects of various measures.

6. Gaps in policy and practice: violence against sex workers

There are some critical gaps in the policies that address various forms of gender-based violence, which have resulted in inadequate protection for particular groups of victims. One of these groups are sex workers. Because of the almost exclusive focus on human trafficking in prostitution, there is little to no attention for other forms of violence and discrimination against sex workers. According to recent research by SoaAids Netherlands and Proud, the Dutch sex workers organisation, 60% of the nearly 300 sex workers interviewed had experienced physical violence in the last 12 months, 78% sexual violence or intimidation, 58% financial or economic violence, and 93% social or emotional violence.¹³ Violence varies from intrusive and unwanted questions to exclusion, discrimination, theft, abuse, and rape.

As indicated by the report, one of the major causes of violence is the stigma on sex work, which not only offers a 'green light' for abuse but also prevents sex workers from reporting violence to the police. Policies that increase the stigma, marginalisation and social exclusion of sex workers, often in name of combatting human trafficking, elevate the risk of violence against sex workers. The same applies to policies that drive women to work outside the licensed and protected sector, among other reasons because of the closure of legal working places and/or because current policies make it impossible for sex workers to legally work independently, without a (licensed) brothel keeper.

The NGOs suggest that the Committee ask the government for a response to the results and recommendations of the SoaAids/Proud research. They recommend that the government systematically conduct an impact assessment of (proposed) prostitution laws, policies and measures in respect to their possible (negative) effects on the safety, autonomy and rights of sex workers, including the right to a safe working place and protection against violence.

7. Gaps in policy and practice: violence against LGBTI people

Violence against LGBTI persons is another subject that deserves more specific attention. In its recent Concluding Observations, CEDAW expressed concern about the reports of hate crimes against LGBTI women and called for intensification of efforts to combat these hate crimes.¹⁴ In November, the Transgender Network Netherlands (TNN), will publish the results of a recent study about violence against trans persons.

The NGOs suggest that the Committee ask the government about its implementation of CEDAW's recommendations and request a response to the results of TNN's research and recommendations.

8. Too little understanding of the intersections between different forms of discrimination

Overall, there is too little understanding of the intersection between various forms of discrimination.¹⁵ The concept is not mentioned in the government report. Nor is there any mention of the verbal and physical violence which women wearing a headscarf are facing every day on the streets and in public transportation. Islamophobic incidents have increased in number at an alarming rate over recent years. Research shows that women who wear headscarves are particularly targeted (72% of the incidents reported), mainly by white male perpetrators.¹⁶ CEDAW has expressed its concern about this violence and asked the government to intensify its efforts to combat stereotypes against Muslim women and racially motivated violence.¹⁷

The NGOs strongly recommend that the government acknowledge the intersection between different forms of discrimination in its policies and suggest that the Committee ask how the government is implementing CEDAW's recommendation.

¹³ Aidsfonds (2018), *Sekswork en geweld in Nederland* (Sex work and violence in the Netherlands).

¹⁴ CEDAW/C/NLD/C/6, section 23 f and 24f.

¹⁵ CEDAW/C/GC/28 section 18.

¹⁶ Valk, Ineke van der (2017), *Monitor Moslimdiscriminatie, derde rapportage*. (Monitor Muslim discrimination, third report)

¹⁷ CEDAW/C/NLD/C/6, section 21 c and 22d.

ARTICLE 8: FINANCIAL RESOURCES

9. No national mechanism to secure sufficient funding on the local level

Within the decentralised system, municipalities are supposed to allocate funding from their own budgets to partially cover the costs of combatting domestic violence and child abuse, including the shelters and the 'Safe at Home' centres. However, there is no national mechanism to ensure that all municipalities deploy sufficient means to implement their obligations under the Convention. According to the government report (II.1.5), "municipalities *can* use other funds", though they are not obliged to do so. A similar situation exists with respect to the structural funds that the 35 'central municipalities' receive for women's shelters. There is no guarantee that municipalities spend those structural funds entirely on women's shelters. NGOs have received signals that in several of these 35 central municipalities there are shortages in the provision of shelter and that several vulnerable groups of women face difficulties accessing them (*see section 1 and 42*).

Municipalities also may decide for themselves whether they provide their financial contribution in the form of subsidies or via tender procedures. Some municipalities use the latter to enlist the cheapest possible care, which may conflict with quality norms for the provision of shelter and support services. The NGOs are very concerned about the use of such tender procedures. Shelter and support services are specialised provisions to offer a safe place to women in life-threatening situations, in which safety, high-quality standards, continuity and the building of expertise should be the first priority. Such specialised care does not fit with tender procedures in which price dominates over quality and continuity.

The NGOs recommend that the government take measures to ensure that all municipalities provide sufficient means to carry out their obligations under the Convention, including the provision of shelter and specialised support, and to guarantee the quality of care. They also recommend abandoning tender procedures for the provision of shelter and support, as such procedures are at odds with the priority that should be given to quality and continuity and the safety of victims.

10. Undermining of the role of organisations of black, migrant and refugee women

Government policies of recent years have structurally undermined organisations of black, migrant and refugee women with respect to their key role in stimulating the discussion on women's rights, emancipation, gender-related violence and harmful practices within their communities. Policies include cuts at all levels, the abolition of support measures for specific target groups, decentralisation, and project-based rather than organisation-based subsidies. All of these factors make it difficult for these organisations to maintain continuity. As a result, expertise and earlier gains have been lost and their participation in the 'integrated' or 'chain' approach to, in particular, harmful practices has fallen significantly (*see for the problems attached to the term 'harmful practices' section 16*). This includes their role as intermediaries between their communities and professionals.

Their role in the development of expertise among service providers and other professionals has reduced as well, as has their ability to influence local and national policies. If the organisations concerned are involved in the implementation of programmes, their members are mostly expected to work for free (whereas white professionals are often paid). In addition, the role they are assigned is mostly limited to the execution programmes rather than being co-developers able to set their own priorities based on their connection with the target group and expertise.

The NGOs recommend that the government take concrete steps to maintain and protect the expertise of organisations of black, migrant and refugee women and ensure their participation not only in the local 'chain' approach, but on the national level as well.

ART. 9: NON-GOVERNMENTAL ORGANISATIONS AND CIVIL SOCIETY

11. NGO involvement in development, implementation and evaluation of policies

Policies addressing violence against specific groups are often developed and implemented from the

top down: *about* the affected groups rather than *with* them. This applies especially to vulnerable and marginalised groups, such as black, migrant and refugee women, and sex workers. As a result, not only are their experience and expertise not fully used, and, in some cases, ignored or even denied, but policies also risk being less effective, doing harm or being counterproductive, for example by reinforcing stereotypes, strengthening existing unequal power relationships or undermining the safety, health and autonomy of the groups concerned. The NGOs strongly advocate for the national and local governments to seriously invest in developing forms of collaborative governance, in which all parties involved, including those affected by the issue, work together to develop, implement, monitor and evaluate policies. A first step could be to jointly work on the recommendations in the ‘*Manifesto Women, Refugees, Safety*’, developed by five Dutch women’s organisations.¹⁸ Another step would be to work together with Proud, the Dutch sex workers organisation, SoaAids and other involved organisation on the recommendations in the report on violence against sex workers.¹⁹

Experience has shown that the involvement of the affected groups is essential to developing new insights and knowledge, as they can contribute from their own lived experience and bring expertise to the table that policymakers simply do not have. Research also shows that diversity leads to more creative solutions and better decisions, especially when dealing with complex problems.

The NGOs recommend that the government ensure the systematic involvement of the groups affected in the development, implementation, monitoring and evaluation of policies that affect their lives and to support the development of more collaborative forms of governance both on the national and local levels.

12. No national cooperation structure with NGOs to address gender-based violence

The NGOs miss a national consultation structure with the most relevant national actors to realise an integrated approach to gender-related domestic violence and to monitor the implementation of the Convention.

The NGOs recommend that the government set up a national consultation structure with (a representation of) the NGOs to realise an integrated approach and monitor the implementation of the Convention.

ART. 10: COORDINATING BODY

13. Lack of national direction and competence to enforce policies

The NGOs appreciate the coordinating role of the Ministry of HW&S (II.1.2). However, as pointed out in section 5, they miss national guidance and an official body that is responsible and accountable for the coordination, implementation, monitoring and evaluation of policies on violence against women and domestic violence on a national and local level. This is especially urgent in light of the decentralisation of policies on domestic violence and child abuse. There is no body (or bodies) to coordinate the collection and analysis of data on violence against women, as is illustrated by the absence of data in the government report. An exception with respect to systematic data collection is the National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children.

The NGOs strongly recommend that the government develop specific policies on violence against women and domestic violence and appoint one or more official bodies to be responsible and accountable for the coordination, implementation and harmonisation of these policies.

ART. 11: DATA COLLECTION AND RESEARCH

14. Lack of systematic data collection on all forms of violence against women

Despite repeated requests from CEDAW, there is still a lack of systematic data collection on violence

¹⁸ Nederlandse Vrouwenraad (2018), https://www.nederlandsevrouwenraad.nl/docs/manifest_vrouwen_vluchtelingen_veiligheid_engels.pdf (Dutch women's council manifest women refugees safety)

¹⁹ Aidsfonds (2018), *Sekswerk en geweld in Nederland* (Sex Work and Violence in The Netherlands).

against women disaggregated across all forms of violence and groups: white, migrant, black, refugee and undocumented women. The same applies to data about, for instance, the number of victims who received a temporary or permanent residence permit based on domestic violence, human trafficking, FGM or other forms of gender-based violence; the number of refugee women granted an independent residence permit; the number of cases of gender-based violence reported to the police, conviction rates, etc. This lack of data leads to policy choices that lack underpinning and hampers the development of effective policies.

CEDAW also expressed its concern about “*the lack of data on the impact of the broadening of the Social Support Act 2015*” and recommended the government to “*systematically collect data on all forms of violence against women(..)*”. CEDAW requested written information on the steps undertaken to implement this recommendation by November 2018.²⁰ NGOs think this information should be sent to GREVIO as well.

While the ‘Safe at Home’ organisations are obliged to provide statistical data to the Central Office for Statistics (CBS) on the number of consultations and cases reported, their data are not segregated by gender of the victim! The police and the child protection agencies do not provide data on domestic violence either and the data provided by the Emancipation Monitor is very general and rather fragmented.

It is clear that more detailed and segregated data is needed. A good model is presented by the National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, who systematically collects, analyses and disseminates data about trafficking in human beings and sexual violence against children, mechanisms that play a role in trafficking, developments, and the effects of anti-trafficking policies.

The NGOs recommend that the government intensify its efforts to systematically collect data on the different forms of violence and groups affected. A start is to segregate the data from ‘Safe at Home’ by the gender of victim and perpetrator. They also recommend establishing a National Rapporteur on violence against women and domestic violence, similar to the National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (see also section 3).

CHAPTER III – PREVENTION

ART. 12.1: PROMOTE CHANGES IN THE SOCIAL AND CULTURAL PATTERNS OF BEHAVIOUR OF WOMEN AND MEN

15. Lack of comprehensive and systematic strategy to eradicate stereotypes

Gender stereotypes are the cause and consequence of gender-related violence, and their perpetuation upholds the existing power relations between women and men. Although the government underlines in its report the need to combat stereotyped gender roles in the prevention of violence against women (III.2), its approach is fragmented, not inclusive and the interpretation is left to third parties (III.2 and III.5). The NGOs are of the opinion that, in order to sustainably eradicate stereotyped gender roles, a more systematic and proactive strategy is needed. Their concerns are shared by CEDAW in its 2016 Concluding Observations (see also section 25).²¹

The NGOs recommend that the government develop a comprehensive and proactive strategy to combat stereotyping, including stereotyping based on the intersection of gender, age, ethnicity and colour. Such an action plan should include a monitoring mechanism to assess the impact of the measures taken and to design remedial action.

16. Government policies reproduce stereotypes

The NGOs note that the government itself maintains and reproduces stereotypes through its policies and measures. Violence directed against black, migrant and refugee women for example, is labelled as

²⁰ CEDAW/C/NLD/CO/6, no. 23d, 24 c and 51.

²¹ CEDAW/C/NLD/CO/6, no. 21b, 22b & 22c.

a cultural problem requiring a gender- and culture-sensitive approach, while such an approach is not considered necessary for violence against white women. The same problem arises regarding the selective use of the term ‘harmful practices’ in relation to black, migrant and refugee communities as if harmful practices do not exist in ‘white’ dominant communities. This reinforces stereotypes that violence against black, migrant and refugee women is a problem stemming from an oppressive collective culture, while falsely suggesting that violence against white women is an individual problem which has no relation to traditional gender roles and structural unequal power relationships between women and men (see also section 6-8). The NGOs note that these stereotypes can be harmful in itself and can hamper women in seeking help.²² Also, the government’s prostitution policies, in which sex workers are predominantly framed as helpless victims of traffickers or pimps or as people forced into prostitution by circumstances beyond their control, reinforce negative stereotypes of sex workers, thereby adding to the existing stigma and social exclusion and increasing the risk of violence.²³

The NGOs further note that the integration courses for migrants and refugees ‘to get to know Dutch culture’, present an image of the Netherlands of about 50 years ago, often with traditional gender roles in which men work and have a career and women take care of the children.²⁴ The NGOs observe a similar pattern in relation to female refugees, where women are informed on topics relating to motherhood and household matters and less supported in finding work and receiving an education than men.

The NGOs recommend that the government critically examine its own policies and carefully consider how it portrays the gender roles of men and women, including in civic integration courses and exams for migrants and refugees, and that it adapt its policies, etc. accordingly.

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

17. Dependent residence status undermines empowerment and self-determination

In cases of family migration (including refugees who join their partner after several months, usually women), migrants receive a dependent residence permit. The NGOs are concerned that in recent years the conditions to obtain an autonomous residence permit have been increasingly tightened. The minimum period of the dependent residence permit has been raised from three to five years. This period can even be prolonged if the civic integration exam has not yet successfully attained. High fees, up to more than €1,500²⁵ for an autonomous permit, hamper women even further in obtaining legal independence. The consequence of the long dependency period is an unequal power relationship between the partners that easily can be misused. Although in theory in cases of violence, an autonomous residence permit can be obtained, it will only be granted if there is proven, and therefore visible, evidence of the violence that took place (see also section 67). NGOs are of the opinion that a dependent residence permit creates a situation where women are, rather than being empowered, more vulnerable to violence, which is contrary to among others art. 12.3. and art. 12.5 of the Convention.

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

²² See e.g. Dr. Brenda Bartelink, *The power to call for inclusion riders’: violence and innocence in gender activism*. <https://religionfactor.net/2018/03/08/the-power-to-call-for-inclusion-riders-violence-and-innocence-in-gender-activism/>.

²³ Aidsfonds (2018), *Sekswerk en geweld in Nederland (Sex Work and Violence in The Netherlands)*; SoaAids Netherlands (2018), *De legale façade. Sekswerkbeleid: hoe kan het anders? (The legal façade. Sex Work Policies: how to do it differently?)*

²⁴ AD 21 June (2018), *‘The doctor is a man, the wife sits at home’*, research of Arieke van Liere; WIB (Civic Integration Abroad Act), video’s ‘Integration abroad’.

²⁵ Ministry Justice and Security (29 March 2018), *Adjustment Fees IND (Immigration and Naturalisation Service)*

ART. 13 AWARENESS RAISING

18. Insufficient awareness of gender-related violence among the general public

In its report, the government describes several campaigns to raise awareness on gender-related violence (III.1). However, only one of them (on domestic violence and child abuse) is aimed at the general public, and it lacks a gender perspective. The campaign that does include an understanding of gender is aimed at a specific group only (self-determination for black, migrant and refugee women). Yet, the NGOs note a general lack of awareness in society of the different types of gender-based violence and how to prevent this violence. Research shows²⁶ that only 2% of Dutch people think of sexual violence in cases of partner violence. The same research also shows that 8% of young people under the age of 25 downplay (sexual) violence (consider it “provoked”) or don’t want to interfere as they consider it a private matter (9%).

The NGOs call upon the government to develop a broad public campaign on violence against women from a human rights perspective, in which the different forms of gender-related violence and gender relationships are positioned in a broader social context and include an understanding of intersectional factors of discrimination against women.

19. Prohibition of religious marriage without civil marriage

It is not legal to perform a religious marriage that is not preceded by a civil marriage; religious officials who do so can be punished. However, many women and religious officials alike are not aware of this and do not recognise its negative consequences for women in particular. Additionally, the police do not follow up complaints.

The NGOs recommend that the government run information campaigns in communities where illegal marriages take place and take measures to strengthen the enforcement of the prohibition.

ART. 14 EDUCATION

20. Need for quality standards in education on gender-related violence

Schools are obligated to address sexuality and sexual diversity education in their curriculum. This has been enacted in the so-called ‘core objectives’ for primary and secondary schools (III.2). The government leaves it up to the individual schools to interpret the objectives and is content with the fact that 95% of schools have implemented them. However, how implementation is carried out remains vague. Although the NGOs are pleased with the inclusion of these topics in the core objectives, they are missing a system of quality standards for their implementation, in which violence against women is connected to the education on citizenship, human rights and gender relationships, and which also addresses intersectional factors of discrimination against women and new forms of online gender-violence.

Furthermore, such a system of quality standards should also be developed for the civic integration courses for migrants and refugees. Since 2013, the civic integration courses for newcomers have been left to private parties, with no system of surveillance on quality standards. A devastating evaluation report in 2017 on the quality and the implementation of the courses led to a change of policy, and starting in 2020, municipalities will once again organise integration courses themselves, as they did before 2013.²⁷

The NGOs recommend that the government develop a system of quality standards for education on gender-related violence, human rights and gender roles and -relations for schools. A similar quality system should be developed and implemented for civic integration courses without further delay. These courses should also include information on available support services in cases of violence.

²⁶ Atria (2017), *Welk geweld telt?* (Which violence counts?).

²⁷ Algemene rekenkamer (Netherlands Court of Audit) (2017), *Inburgering, eerste resultaten van de wet inburgering 2013* (Civic Integration, first results Integration Act 2013).

ART. 15 TRAINING OF PROFESSIONALS

21. Too little professional training on forms of gender-related violence other than domestic violence

In its report, the government describes the different types of training provided to different actors in the field (III.3). The NGOs note that the majority of these training programmes are provided within the context of the Reporting Code Act (Meldcode) and are therefore focused on domestic violence and child abuse, or that the focus is placed on sex education and sexual resilience. As a result, there is a lack of professional competence for recognising and taking action in cases of other forms of gender-related violence, such as stalking, rape or sexual harassment in the public domain or at work.

Furthermore, the NGOs note that there is no standard, nation-wide policy for regular and mandatory training of staff (e.g. once a year) on gender-related violence. This is left to the discretion of individual managers. Institutions that see regular staff turnover, such as health care institutions or asylum-seeker centres, are confronted with an ongoing draining of skills and expertise that are not being replaced.

The NGOs recommend expanding training programmes for professionals to include forms of gender-related violence other than domestic violence. In addition, regular training on the different forms of gender-related violence should be mandatory for professionals in institutions where the chances are high that they may come in contact with victims, such as in the medical professions and in asylum seekers' centres.

22. Lack of training and a victim-centred approach of the Labour Inspectorate in human trafficking cases

The NGOs observe that cooperation with the Labour Inspectorate in cases of human trafficking for purposes other than prostitution, such as domestic work or agriculture, is often still problematic. The Labour Inspectorate is primarily focused on tracking workers without a residence permit and does not have a victim-centred approach. Appointments for an intake with a (potential) victim can take six to eight weeks, which severely reduces the victim's access to assistance and protection. Moreover, the victim is sometimes already during the intake interview, before any investigation is done, informed that the case will not be further investigated. The need for a victim-centred approach is underlined by the EU Fundamental Rights Agency (FRA) in their recent report on labour exploitation (other than in prostitution).²⁸ The FRA recommends the EU Member States to create safe conditions during workplace inspections which enable and empower workers to report experiences of labour exploitation.

The NGOs urge the government to take the necessary steps to ensure a more pro-active and victim-centred approach by the Labour Inspectorate and to improve the cooperation between NGOs and the Inspectorate.

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

Guiding and assisting migrant and refugee women, with or without a (temporary) residence permit, requires a specific combination of expertise and (communication) skills which professionals do not always possess.²⁹ There is often a lack of awareness and/or knowledge of the consequences of migration law relevant to the position of migrant and refugee women. As a result, its importance is either underestimated (e.g. the proof of violence that is needed to apply for an autonomous residence permit is not collected) or overestimated (e.g. professionals think that victims with an insecure or no migration status are not entitled to support and care).

Professionals often lack (inter)cultural communication skills and are not at ease discussing topics such

²⁸ EU Agency for Fundamental Rights (2018), *Protecting migrant workers from exploitation in the EU: boosting workplace inspections*, p. 8. See <http://fra.europa.eu/en/publication/2018/protecting-migrant-workers-exploitation-eu>.

²⁹ Waesberghe, Eliane Smits van et al. (2017). *Dilemma's van hulpverleners bij gedwongen partnerkeuze en relatievorming* (Dilemmas of social workers in forced partner choice and relationship formation), Utrecht: Movisie & Verwey-Jonker Instituut.

as sexual violence with their clients, because they automatically assume that the subject is taboo for the women they work with. Moreover, they often lack sufficient knowledge about the different manifestations of violence that migrant and refugee women face and the different approaches that may be appropriate. Not only can this result in ineffective support, but it can also have ramifications for the victim's safety.

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

24. Professionals lack knowledge about the Istanbul Convention and its obligations

Professionals generally lack knowledge about the Istanbul Convention and its obligations. This applies to all relevant actors, including child protection agencies, police, prosecutors, judges, lawyers and local and national policymakers. A search into the database of publicised court rulings in which reference was made to the Convention generated only three hits.³⁰

The NGOs recommend including the Istanbul Convention as a structural part of training programmes aimed at relevant groups of professionals, including child protection agencies, lawyers and judges.

ART. 17: PARTICIPATION OF THE PRIVATE SECTOR AND THE MEDIA

25. Gender stereotyping by the media

The government report fails to refer to the recommendation of CEDAW on the role of the media (III.5.1). In its 2016 Concluding Observations,³¹ the CEDAW Committee expressed its worries about the persistence of discriminatory gender stereotypes in the media. It urges the government to take action, among others to amend the Media Act so that gender-role stereotyping is considered discrimination and to conduct a study on the possible impact of sexist portrayals of women and girls in the media and the extent to which they exacerbate gender-based violence against women.

The NGOs would like to know which steps the government has taken in response to the recommendations of CEDAW, including steps taken towards amending the Media Act so that gender-role stereotyping is considered discrimination.

26. Lack of measures against sexual harassment at work

Nearly three-quarters of all women have experienced sexual harassment during their lives. In one out of three cases, this harassment occurred at the workplace.³² The impact of harassment can be serious: it hampers the participation of women in the labour market and can contribute to psychological problems. According to research carried out by the Dutch labour union FNV, nearly 50% of all workers experience sexual harassment at their job; 75% of whom are women. Less than half of these women report the violence.³³ This number is even lower for migrant women whose residence permit and livelihood depends on keeping their job, such as female labour migrants,³⁴ (undocumented) migrant domestic and care workers, and transgender migrant women. A recent questionnaire by the medical journal *Medisch Contact* showed that nearly 80% of the female trainee doctors and specialists in hospitals had experienced sexual intimidation. Previous research from 2006 and 2013 showed similar

³⁰ Database: Rechtspraak.nl. (Database: Judiciary) Research: <https://www.vrouwenrecht.nl/2018/07/31/jurisprudentie-verdrag-van-istanbul> (Jurisprudence Istanbul Convention)

³¹ CEDAW/C/NLD/CO/6, no. 21b, 22b & 22c.

³² <http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report>

³³ FNV (2017), *Seksuele Intimidatie op de Werkvloer* (Sexual Intimidation at the workplace).

³⁴ Fairwork (2018), *Sexual harassment in the workplace among Polish migrant workers in the Netherlands*.

figures.³⁵

In its report (III.5.2), the government primarily refers to the employers: they are responsible for policies on sexual harassment and implementation thereof in the workplace. The sole task of the SZW inspection is to monitor the process by which an employer shapes this policy. It is not required to examine the quality of policies or whether they are actually implemented in practice. To the NGOs, this seems a rather restricted interpretation of governmental responsibility. There is no obligation for employers to include complaint procedures or confidential agents in the policy. If confidential agents are appointed, they do not have legal protection like members of Workers Councils do. Recent research by FNV shows that most employees are not aware of what their employer does or should do to prevent sexual harassment or where to go if they become victims themselves.

Female migrant workers make up an especially vulnerable group. Research among female Polish migrant workers shows that they are often fully dependent on their employers, do not speak Dutch and do not know their rights as employees under Dutch law and what actions they can undertake in case of sexual harassment or violence. Moreover, the nature of the employment relations (mostly flexible, temporary contracts and mostly under so-called '0-hour contracts') keeps workers dependent on the benevolence of the manager making the work schedules. They may accept sexual harassment as their own fault or something that is inevitable. The few institutions and organisations, including unions, that address sexual harassment hardly ever provide information in any language but Dutch.³⁶

The NGOs recommend that the government take a more proactive role in combatting sexual intimidation at work and not leave this important matter entirely to the employers. The government should, for example, ensure that there is a safe place where women can report sexual harassment, and develop information materials for female workers in multiple languages about their rights, the obligations of employers, and where they can get help in the case of sexual harassment. This is even more important in labour sectors where many migrants work and/or are prone to abuse and exploitation.

CHAPTER IV – PROTECTION AND SUPPORT

ART 18: GENERAL OBLIGATIONS

27. Lack of gendered understanding of violence against women

As mentioned in section 3, government policies show a fundamental lack of understanding of the gendered character of violence against women. This negatively affects measures to prevent and combat violence against women and protect and support victims. For instance, one of the effects of the merger of the centres for domestic violence and child abuse is that women who are victims of domestic violence hesitate to contact 'Safe at Home' for fear of being accused of child abuse and therefore having their children taken away (see section 48). Another example is the granting of joint custody even in cases of domestic violence based on the attitude that 'if two fight, both are guilty' (see section 51).

Furthermore, the NGOs are concerned about the dominance of the paradigm of self-sufficiency and self-reliance in government policies. Although it, of course, is good to help women to rely on their own power, these kinds of methodologies (i.e. the 'Eigen Kracht' methodiek/'Own Strength' methodology) are not suitable for everyone and in every situation (see section 23).

28. No guarantee for the continuation of successful programmes

In its report, the government describes the programme The New Future ('De Nieuwe Toekomst') as a good example (II.2.4). This programme supports women from shelters in participation and economic

³⁵ NOS (6 June 2018), *Sexual intimidation widely spread among medical practitioners*. <https://nos.nl/artikel/2235247-enquete-seksuele-intimidatie-wijdverbreid-onder-artsen-en-assistenten.html>.

³⁶ Ibidem note 32.

independence. The programme is successful, but, like most initiatives in the field, it was developed and implemented with project grants; its continuation after the project period ends depends on the financial support of individual municipalities. Currently, this programme is supported by only five municipalities.³⁷

The NGOs recommend that the government ensure that successful empowerment programmes be integrated into policies on domestic violence at the local level, rather than make their implementation dependent on individual municipalities.

29. Access to protection for trafficking victims is dependent on their cooperation with police

Dutch anti-trafficking policies are primarily focused on the victim's contribution to criminal procedures. Before the reflection period or a temporary residence permit is granted, the (potential) victim's story is assessed based on indicators for starting a criminal investigation, rather than on a consideration of the victim's needs or the victimhood as such.³⁸ This creates the risk of false 'negatives', since the absence of law enforcement indicators does not necessarily reflect a lack of victimhood. Although, in theory, victims who are not able or willing to cooperate with the authorities for fear of reprisals or because of psychological problems are still entitled to a residence permit, the government does not provide figures about the number of victims of trafficking that actually receive such permits. Moreover, the government report does not mention that the victim's right to stay in the country during an appeal of the decision not to prosecute (*VII.1*) has been abolished.

The NGOs are of the opinion that the victim's needs, or the victimhood as such, should be placed at the forefront of the identification process. For minors, it is even more important that identification and prosecution be de-linked, as they may be too young to cope with the demands of a criminal law procedure. Such an approach would be in line with the Convention. In addition, identification – and thus access to protection and support – should not be fully dependent on the police or the Labour Inspectorate (*see also section 22*). Although a multi-disciplinary identification team is in the process of being established, it is being done at a painstakingly slow pace.

The NGOs recommend that victim identification and criminal proceedings be de-linked. They also suggest that the government be urged to speed up the establishment of multi-disciplinary identification teams and to mandate these teams to offer the reflection period. They would also like the government to provide figures on the number of victims who are not able or willing to cooperate with the authorities who actually received a residence permit.

30. Insufficient consular assistance for abandoned women and minors

Women and minors (girls and boys) who have been abandoned in their country of origin face major obstacles in returning to the Netherlands. Although Dutch embassies have been given a central role in facilitating their return, there are huge differences in the support they offer. In addition, they are often located far away or in another country. NGOs also note differences in which victims receive support: e.g. married or not married, minor or adults. Furthermore, it often takes weeks before the Dutch immigration agency has verified the person's right to return, even though, according to Dutch immigration law, the person has the right to start a procedure for a continued residence permit in the Netherlands. This is a hazard for the safety of the abandoned victim who fled home and sought the embassy's help. Minors face the problem of arranging a passport or identification papers in order to leave the country without the consent of their parent(s). A ticket fund can help pay for the ticket to return to the Netherlands, but victims are often not informed about this possibility.³⁹ The NGOs are

³⁷ Information from the Federation of Women's Shelters (Federatie Vrouwenopvang), August 2018.

³⁸ Rijken, Connie Rijken et al. (2013), *Mensenhandel: het slachtofferperspectief. Een verkennende studie naar behoeften en belangen van slachtoffers van mensenhandel in Nederland* (Trafficking in human beings: the victim perspective). Intervict, p. 147.

³⁹ Femmes for Freedom (28 August 2018), "Waarom helpt Nederland zijn meisjes niet?" (Why doesn't The Netherlands help

wondering why the government was only in a few cases able to bring abandoned women and minors back to the Netherlands.⁴⁰

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

ART. 19: INFORMATION

31. Need for more accessible information in multiple languages

Many women and girls who have become victims of violence don't know where to find shelter, support or legal aid. It's not always easy to obtain this information. Victims are largely expected to be self-sufficient and self-reliant, to have computer skills and access to the Internet and knowledge of the Dutch language. Relevant information on rights, support and protection services is often only available in digital format and, with a few exceptions, in Dutch and occasionally in English. The information package that migrant families receive with their visa does not contain information on rights, provisions and support in cases of violence. No free interpretation services for general and specialised support and health services are available, which hampers the protection and support of victims who do not speak Dutch or English sufficiently.

The NGOs recommend that the government ensure that information about domestic violence is easily accessible and available in multiple languages. They also recommend including information about rights and support services in cases of (domestic) violence in the package that migrants receive from embassies. Furthermore, the NGOs urge the government to reinstall free interpretation services for general and specialised support and health services.

ART. 20: GENERAL SUPPORT SERVICES

32. No support, services or safe shelters for undocumented migrants

In general, undocumented migrants have no legal right to receive support services and have no access to shelters.⁴¹ As a result, they are often dependent on protection and support from solidarity organisations or individuals, which makes them even more vulnerable to abuse and violence. Temporary shelter is sometimes possible, but these shelters are not specialised in violence and are only available when the person has agreed to leave the country. Although undocumented migrants are entitled to receive health care, and health care professionals can be reimbursed for offering basic medical care, many of the migrants or professionals are not aware of this. Moreover, abortion, contraception for women from 21 years of age, dental care for adults and physiotherapy, for example, are only available to those who can pay it.⁴²

The NGOs urge the government to ensure that all victims of violence have access to protection and support, regardless of their migration status and without any conditions.

ART 22: SPECIALIST SUPPORT SERVICES

33. Concerns about insufficient funding for specialised services

The Convention states that the government has to ensure adequate specialised support that is adequately distributed geographically and available to all victims of violence. Over the last few years, the focus of the government's policy has been shifting towards prevention, identifying and reporting violence, and consequently, a growing portion of the financial resources available has been spent on these efforts. The NGOs are concerned that this shift in focus will be at the expense of specialised

its girls?).

⁴⁰ Parliamentary Papers 34 550 V 78, 12 June 2017.

⁴¹ National Ombudsman (2017), *Vrouwen in de Knel* (Women in a Tight Squeeze, an investigation into bottlenecks in women's shelters).

⁴² Dokters van de Wereld (2018), *De deur naar zorg. Het recht op gezondheid en zorg voor ongedocumenteerden migranten* (The door to care. Right to Health and Care for undocumented migrants).

services for victims of violence, especially in a decentralised system in which every municipality makes its own choices.

The NGOs recommend that the government take the necessary measures to ensure that specialised support services remain available throughout the country.

34. Intersex persons

Intersex children in the Netherlands are still routinely subject to medically unnecessary and irreversible surgery and other normalizing treatments without their free and fully informed consent. This is a form of physical violence allowed by the state. CEDAW and CESCR have expressed their concern about this practice.⁴³ CEDAW called on the government to “develop and implement a rights-based health care protocol for intersex children which ensures that children and their parents are properly informed of all options and that children are, to the greatest extent possible, involved in decision-making about medical interventions and that their choices are fully respected.” Until now, no further action has been taken by the Dutch government.

The NGOs would like to know what the government’s views are with respect to the human rights of intersex people and what steps it will take to effectively ensure that no child is subjected to unnecessary surgery or treatment without the child’s free and fully informed consent.

35. Lack of access to specialised shelter for victims of human trafficking in EU or NL

Currently, with the exception of emergency cases, the specialised shelters for victims of human trafficking (COSMs) are not accessible to Dutch and EU victims, even though these victims are often in need of these specialised shelters and care.⁴⁴ Moreover, since the special arrangements for trafficking victims are primarily geared towards third-country nationals, EU and Dutch victims have little or no access to specialised assistance and other provisions.

The NGOs recommend that the government make specialised shelters and provisions available to all victims, including Dutch and EU victims, and improve the overall access to assistance and protection for EU victims.

36. Insufficient protection and support for abandoned women and minors

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

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

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

⁴³ CEDAW/C/NLD/CO/6, section 22f, CESCR E/C.12/NLD/CO/6, section 48/49.

⁴⁴ Fier (2018), Manifest “Effecten van de Transformatie Jeugdhulp - Positionering van (zeer) schaarse specialistische functies in het “zorglandschap” (Effects of the Transformation Youth Act, Positioning of (very) scarce specialist positions in the “care landscape”).

37. Inadequate protection and services in asylum seekers' centres

Female asylum seekers who are in the process of obtaining refugee status and who become victims of domestic violence are legally excluded from both regular and specialised shelters and support services and only have access to the general, non-specialised shelters and services for asylum seekers. These shelters are often very basic with little provisions and with little privacy. Incidents of domestic violence are not registered as such.⁴⁵ Asylum seekers are transferred to other centres on a regular basis, which makes it difficult, if not impossible, to provide them with adequate and continued care. Moreover, members of staff and volunteers often lack knowledge and expertise on the applicable laws and regulations, on coping with traumatic experiences, cultural sensitivity, and client-centred prevention, care and support. In many cases, staff and volunteers are ill-equipped to talk about sexual violence, or they assume that it is a taboo for the women themselves or even that “the women consider domestic violence an accepted part of their culture.” Furthermore, training is irregular and insufficient (*see also section 21*).

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

38. Insufficient specialised support services for refugee women

There is a lack of data, knowledge and insights on specialised support services for refugee women. Little is known about the specific effects of the violence that female refugees may have endured in their countries of origin, on their flight and/or during their stay at the asylum centres. There is hardly any specialised psychological and/or physical support available to them to help them cope with traumatic experiences.⁴⁶ As for the programmes that do exist, they are mostly fragmented, only able to offer short-term services, and primarily focussed on acute physical complaints. Moreover, once someone is granted refugee status and leaves the asylum seekers' centre to start their life in the Netherlands, the programme ends and a new one has to be found and applied for in the new place of residence. Not every municipality offers specialised services to refugee women and the procedure is often complex and unclear. A similar problem applies to the specialised medical care refugee transwomen need. In addition, the methodologies used in women's shelters and by care workers are not always suitable for all refugee women due to their specific experiences with warfare and violence. Also their cultural background may prevent them from speaking openly about sexuality and sexual violence.

The NGOs stress the need to gather more knowledge about the psycho-social needs of female refugees, including transwomen, the specialised trauma counselling they need, and the current gaps in the specialised trauma services available. They also stress the need to ensure access to specialised trauma counselling and continued treatment when transitioning from an asylum seekers' centre to independent housing.

39. No coherent policy on FGM and other harmful practices

The Dutch policy on harmful practices is fragmented and predominantly targets migrant and refugee women and girls. This not only ignores the fact that harmful practices are a broader phenomenon that may also occur in, for example, orthodox Christian or Jewish communities, but also reinforces the stereotype that harmful practices exclusively affect black, migrant and refugee women. Moreover, research shows that when women are exposed to one type of harmful practice, they tend to be at risk for other forms of harmful practices or gender-related violence, including honour-related violence, forced marriage, domestic violence, child abuse or female genital mutilation (FGM). Professionals, such as health care workers and teachers, are not sufficiently trained in recognising these risks among

⁴⁵ KIS (2017), *Huiselijk geweld en veiligheid in asielopvangcentra* (Domestic violence and safety in asylum centres)

⁴⁶ Arq (2016), *Veerkracht en Vertrouwen. De bouwstenen voor psychosociale hulpverlening aan vluchtelingen* (Resilience and Trust. The building blocks for psychosocial assistance refugees)

various groups and are not adequately alert to the existence of other types of harmful practices. This lack of awareness hampers identification and assistance. The NGOs also note a general lack of expertise on harmful practices in asylum seekers' centres.

The NGOs recommend that the government develop a coherent and inclusive policy on the entire spectrum of harmful practices based on a human rights perspective, in which the various manifestations of violence and their underlying causes are linked, and addressed via prevention, assistance and health care. The NGOs also recommend that the government include information on FGM in their annual information campaign for minors at risk of forced marriage and abandonment.

40. No insurance coverage specialist support and surgery for FGM survivors

In the Netherlands approx. 29,000 women are victims of FGM.⁴⁷ The NGOs are of the opinion that better access to specialised services is badly needed to overcome the physical and psychological complications of FGM. Moreover, a package of extensive multidisciplinary support, including, if necessary, reconstructive surgery, should be covered under basic health insurance. Despite promises from the government in 2014, this provision has still not been arranged.⁴⁸

The NGOs recommend the government provide basic insurance coverage for access to all specialised services, including the possibility of reconstructive surgery, for FGM survivors and execute its promise without further delay.

ART. 23 SHELTERS

41. Lack of continuity in regulations and procedures for women in shelters

Victims of domestic violence in need of a safe place to stay often struggle to gain access to shelters. Once they do, they may encounter several problems during their stay and when exiting the shelter as well. Every year, approximately 12,000 women make use of the women's shelters. In 2017 the National Ombudsman conducted a ground-breaking study into the problems that women face in women's shelters.⁴⁹ His conclusions were alarming. The study revealed that women in women's shelters are confronted with various systems, regulations and procedures, e.g. the Social Support Act (Wmo), youth care, social services, tax authorities, other municipal services, that are almost impossible to navigate independently. Arranging income and child benefits is complex and takes a long time. Debts often (further) increase while in the shelter. Obtaining assistance—for oneself and one's children—can take a long time because funding has to come from a variety of sources. When women are ready to leave the shelter, they often struggle to find suitable housing, not only due to the general shortage of affordable housing but also because they may not be eligible for social housing due to outstanding debts and/or because the municipality fails to issue an emergency declaration even when the women are entitled to one (*see section 42*). There is an overall lack of continuity in social benefits and care,⁵⁰ therefore, in many cases, women have to start bureaucratic procedures all over again after leaving the shelter.

The National Ombudsman has made various recommendations to solve these problems, emphasising that the Ministry of Health, Welfare and Sport should take the lead in doing so as they are the responsible body for the system as a whole. In its report (*II.2.4*), the government acknowledges the reported problems, yet it believes that the solution lies mainly at the local and regional level, whereas it sees itself as mainly having a "facilitating and supportive" role. Together with the National Ombudsman, the NGOs consider the government's response insufficient: a comprehensive, integrated national action plan is needed to implement sustainable solutions - one that includes concrete targets,

⁴⁷ Pharos (2016), *Factsheet Female Genital Mutilation*.

⁴⁸ Parliamentary Papers, 2013-2014 ah-tk-1690, questions MP and answers minister Health, Welfare and Sports, 9 April 2014.

⁴⁹ Ibidem note 41.

⁵⁰ Joint Inspectorates (2017), *Moeder en kind verlaten de vrouwenopvang. (Wie) Is dat een zorg? (Mother and child leave the women's shelter. Who cares?)*.

clear benchmarks and timeframes with the national government playing a central, coordinating role. While the NGOs are pleased with the establishment of a national working groups to deal with the reported problems, they do not consider these initiatives enough given the extent and urgency of the problems.

The NGOs urge the government to take the lead and develop a comprehensive action plan with clear goals, benchmarks and timeframes under the direction of the Ministry of Health, Welfare & Sports to solve the problems identified by the Ombudsman and others. The NGOs also call on the government to carry out an independent evaluation within two years to determine the effects of the measures taken and the progress that has been made.

42. Shortage of suitable, easily accessible shelters in sufficient numbers

There is a structural lack of shelter capacity in the Netherlands. Although the minister of HW&S acknowledges this problem, the national government and the local authorities look to each other to solve it. According to the national government, it provides funding to the municipalities to organise the shelters, thus it is up to the municipalities to solve the problem. According to the municipalities, however, the government's funding is insufficient to solve the problem, thus, the national government is to blame. As long as the national government does not take its responsibility for the system, the NGOs expect the problem to continue. In practice, the shortage is even higher than it seems: due to the lack of capacity, shelters apply strict criteria for selecting victims and only admit women in the case of an acute threat (*see section 43*).

The NGOs urge the government to take up the responsibility to solve the shortage of shelters and to ensure that all victims have access to a safe shelter when they need one. They also recommend to regulate responsibilities and accountability in such a way that local and national authorities can no longer point to each other to solve serious problems that are recognised by both parties.

43. Access to shelter only in cases of acute threat

According to research, about 35% of the women who applied for shelter in 2017 were actually admitted. The other 65% received other types of assistance.⁵¹ The structural lack of capacity (*see section 42*) of women's shelters tends to set in motion a system of ever more strict admissions criteria to negotiate the shortage, particularly in cases where specialised assistance is needed. Some NGOs reported that women only got access in cases of acute threat, that is, if they had been physically abused in, e.g., the last 6 or 24 hours. The NGOs also note differences between municipalities: the shelters in one region are more accessible than those in another. These differences cause arbitrariness and unpredictability.

An additional problem, which was also noted by the Ombudsman, is that when no formal decision has been made as to whether a woman has been accepted or rejected for admission to a shelter, she cannot appeal it in case of rejection.⁵²

The NGOs recommend that the government systematically monitor how many women apply for shelters, how many are rejected and why, what other help was offered and whether this provided the protection and safety the women needed. They also recommend that the government take measures to ensure that victims who apply to a shelter receive an official decision, both in cases of admission and rejection.

44. Bottlenecks in accessing housing after stay in shelter

A social network is a proven factor in preventing domestic violence. For this reason, the Dutch law on housing states that victims of partner-related violence should be granted an urgency status, provided that the municipality has housing regulations that include provisions for an urgency system. On paper,

⁵¹ Ibidem note 48 and 50; Significant (2017), *Toegang tot de opvang van slachtoffers zonder eerdere verblijfsstatus (Access to shelter and support of victims without previous residence status)*, Regioaanpak Veilig Thuis (2016), *Monitor Vrouwenopvang* (Monitor Women's Shelters).

⁵² Ibidem note 47.

the problem seems well taken care of. In practice, however, it turns out that many municipalities and social housing corporations do not stick to this regulation and quite often women cannot obtain housing even though they were granted an urgency status in the municipality where they are registered and have a social network.

The NGOs recommend the government take the necessary measures to ensure that all municipalities know and apply all applicable regulations for granting urgency to victims of domestic violence who exit the shelter.

45. Exclusion of undocumented women from shelters is violation of the Convention

Despite international obligations, for example the Istanbul Convention and the EU Victim Directive, undocumented women who are victims of domestic violence are excluded from access to shelters and support services (see section 22). Up until now, the government has left it up to the discretion of municipalities to provide protection to this group victims without adjusting the law according to international standards. Whether or not undocumented victims have access to shelter and support therefore depends on the municipality concerned. There is no data on the number of women who have been refused access to shelter and support because of their residence status.⁵³

In its report (II.2.4), the government indicates that it intends to issue a general administrative regulation (AMvB) to bring the law in accordance with the Convention. However, the envisaged regulation only covers women waiting for a decision on an application for a residence permit and only during their procedure. If their application is rejected, they lose the right to remain in the shelter. For all other undocumented women, nothing will change. According to the NGOs, this is in violation of Art. 4.3. and Art. 18.1 of the Convention, which oblige the state to provide protection and support to all victims of violence against women and domestic violence, regardless of their migration status.

The NGOs urge the government to bring the legislation in accordance with the Convention and ensure that all victims of violence against women and domestic violence have access to protection and support, regardless of their migration status.

46. Obstacles to obtaining shelter and protection in cases of serious threat

In cases of domestic violence, the top priority should always be the victims' safety. The Women's Shelter System (Vrouwenopvang) is a national system with national coverage. This is at odds with the decentralisation of care to the municipalities. Due to the lack of national guidance and authority, there is no guarantee that women who need shelter outside of their region for safety reasons will receive it. The NGOs believe that the government is ultimately responsible for the proper implementation of the obligations arising from the Convention, also in a decentralized system. In addition, the NGOs believe that possibilities should be explored for providing shelter to people in critical danger in other parts of the Kingdom or in neighbouring countries.

The NGOs urge the government to ensure access to shelters in other regions when needed for safety reasons. The NGOs also recommend that the government explore possibilities to arrange shelters abroad or in other parts of the Kingdom.

47. Lack of an independent quality control system

Currently, there is no national, independent system to monitor the quality of shelters. When complaints or criticism do arise, the municipalities point to the national government and *vice versa*. While a set of quality standards has been developed by the shelters in cooperation with the Association of Municipalities (VNG), the document is only intended to serve as a guideline for municipalities.⁵⁴ Municipalities are free to implement it as they see fit, either through subsidies or tenders (see also section 9) and to monitor quality themselves. Inevitably, this results in differences in quantity and quality among municipalities. In some municipalities, shelters are well organized, while in others they

⁵³ Ibidem note 51.

⁵⁴ Regioaanpak VeiligThuis (2016), *Basiskwaliteitseisen hulp en opvang slachtoffers van huiselijk geweld* (Basic quality requirements for support and shelter for victims of domestic violence).

lack basic provisions, such as cooking facilities, hygiene, interpreters, and other facilities. The quality and quantity of support services for children varies as well.

The NGOs recommend that the government establish a national, binding system of quality standards for shelters coupled with an independent quality-control system, and to provide shelters with the means to make the necessary improvements to meet these national standards.

ART. 24: TELEPHONE HELPLINES

48. No telephone helplines for violence against women

There is no telephone helpline for violence against women in the Netherlands. The helpline of *Safe at Home* (Veilig Thuis) (IV.3.1) is meant for advice and support in cases of domestic violence or child abuse. The other national helplines mentioned by the government (IV.3.2) are general helplines and are not specialised in providing advice on the various forms of gender-related violence.

The NGOs recommend the government establish a helpline for callers who need advice and support for forms of gender-related violence other than domestic violence and child abuse.

49. Limited reach of the helpline for domestic violence

In the opinion of the NGOs, the outreach of the *Safe at Home* helpline for advice in cases of domestic violence and child abuse (IV.3.1) needs improvement. Currently, most callers to the helpline are professionals, only a minority are ‘non-professionals’.⁵⁵ The reason for this is that, first of all, the helpline is not widely known to the general public. Refugee women and women who don’t speak enough Dutch or English have little to no knowledge of the helpline. Secondly, victims or their family/friends are hesitant to call for advice or support because of the dual role of *Safe at Home*: on the one hand, it provides advice and support, but on the other, it also reports cases of child abuse, thus exposing women to the risk of losing their children or being put under a child protection measure.

Although the government mentions in its report (IV.3.1) that *Safe at Home* will not act without the explicit permission of the person seeking its advice, its dual role still prevents women with children, in particular, from calling in for advice or support out of fear of being accused of child abuse. This is reinforced by the fact that, according to official policy, children who are witness to domestic violence (e.g. against their mother) are considered themselves to be victims of child abuse, for which often both parents are blamed (see also Art. 31, section 51-52).

The NGOs recommend the government to ensure a safe helpline for victims of domestic violence that they can call without fear of negative repercussions, for example, that their children will be taken away. They also suggest the government investigate which groups are reached by the Safe at Home helpline and to what extent Safe at Home’s dual role blocks victims from calling in for advice or help.

CHAPTER V – SUBSTANTIVE LAW

ART. 29 CIVIL LAWSUITS AND REMEDIES

50. Courts and lawyers have insufficient knowledge of marital captivity

Marital captivity refers to situations in which a woman cannot dissolve a (religious) marriage without her husband’s consent. Dutch law offers the possibility for women to request that the court order the unwilling husband to cooperate with a religious divorce under the threat of a fine. Although the courts are increasingly applying this provision, lawyers and judges, as well as the women concerned, are still insufficiently aware of this possibility. Moreover, it does not always solve the problem, for example when the woman cannot execute the order due to the man’s lack of income or when the (ex-)husband lives in his country of origin. In the latter case, women must travel to the country concerned to try to get a divorce. Not only is this expensive, it also exposes the woman to the risk of prosecution for bigamy

⁵⁵ Argos radio documentary, *Safe at Home? Never heard of it*. Available at <https://www.vpro.nl/argos/media/afleveringen/2018/Veilig-Thuis--Nooit-van-gehoord.html>.

or adultery in countries with religion-based family law. Moreover, it is often not possible to get a divorce in the country of origin, for instance, due to corruption within the courts.

In a recent letter on marital captivity to the Parliament, the Minister for Legal Protection announces that in order to create more clarity about the possibility of enforcing cooperation via a court order, he intends to lay down in law the principle that the refusal to cooperate with a religious divorce is to be considered a wrongful act against the other marriage partner.⁵⁶

The NGOs are positive about the steps the government wants to take. However, they miss the government's answer to the question of how it intends to improve the provision of consular support, so that women do not have to travel to their (ex-)husband's country of origin themselves with all the costs and risks it entails. The same goes for other strategies, such as starting a dialogue with the countries of origin concerned about the mutual recognition of divorces, using criminal law, and improving information to the groups concerned in cooperation with specialised NGOs. In general, the NGOs would like to know how the government intends to involve specialised migrant women's NGOs in the development, implementation and evaluation of measures, as they are in direct contact with the target groups and are the real experts.⁵⁷

The NGOs suggest that the Committee asks the government to develop an action plan to improve consular, legal and political support for women who are dependent on a divorce in another country to end their situation of marital captivity and to assess the various measures that have been proposed in previous debates in collaboration with specialised migrant women's organisations.

ART. 31: CUSTODY, VISITATION RIGHTS AND SAFETY

51. Joint custody is the rule even in cases involving domestic violence

Article 31 stipulates that arrangements for custody and parental access should take incidents of violence into account and should not jeopardise the safety and rights of the mother and/or the children. Art. 51 stipulates that a risk assessment should be made by the relevant authorities. In Dutch law and practice, however, the rule is that parents shall have joint custody of the children, even in cases of domestic violence. Case law confirms that domestic violence is not a reason for not granting joint custody. Women are put under severe pressure to 'forget the domestic violence' and cooperate 'in the interest of the children', based on the dogma that it is always good for children to have (close) contact with both parents, no matter what happened (or happens). The NGOs consider this practice to be not in line with the Convention. Oftentimes, family judges do not even know that there is also a criminal case for domestic violence, though this is something they ought to check.

No truth-finding and no risk assessment

According to the Youth Act, the Child Care and Protection Board is tasked with 'truth-finding' and assessing the risk of violence; however, this rarely happens in practice.⁵⁸ Signals of child abuse are usually looked into, but indications of domestic violence are hardly ever investigated and consequently no risk assessment is made. Situations of domestic violence are often simply qualified as a 'conflict divorce' for which both partners are supposed to be equally guilty. It is seldom recognised that the parents are not in an equal position in situations of violence. In the case of violence of the father against the mother in the presence of the children, the Child Care and Protection Board often blames both parents. In its 2016 Concluding Observations, the CEDAW Committee already expressed its concern about "the lack of information on whether or not judges in the State party systematically assess

⁵⁶ Parliamentary Papers 2017-2018, 34 775 VI nr. 101.

⁵⁷ Femmes for Freedom (2018), *Comments to the Letter of the minister on marital captivity*, 14 May 2018; Kruiniger, Pauline; Universiteit Maastricht (2018), *Niet langer geketend aan het huwelijk! Juridische instrumenten die huwelijkse gevangenschap kunnen voorkomen of oplossen*. No longer chained to the marriage! Legal instruments that can prevent or solve marital imprisonment).

⁵⁸ See for instance Court Amsterdam 29 May 2018, case no. 200.209.859/01.

*domestic violence before deciding on child custody.”*⁵⁹

Myths about high conflict divorces: lack of evidence-based knowledge among professionals

Recent research shows a lack of knowledge among professionals on the considerable percentage of so-called ‘conflict divorces’ with a history of partner violence (40-50%), the relatively low percentage of false accusations of child abuse (10%), and the ineffectiveness of mediation in the case of conflict divorces.⁶⁰ Lack of knowledge can lead to decisions that may have harmful effects. This underlines the need for training of the relevant professionals by experts who are knowledgeable about the scientific literature on conflict divorces, domestic violence, false accusations and mediation. Recently there has been a pilot project on the use of MASIC, a structured screening method for truth finding and risk assessment, in cooperation with, among others, the High Conflict Forum (HCF) in Toronto. The HCF is a Canadian group of experts that has developed a Best Practice Guide based on scientific knowledge, which has led to changes in the law and the standard inclusion of a screening on partner violence in child custody evaluations. It is, however, not clear if and how the pilot has been followed up.⁶¹

The NGOs suggest that the Committee ask the government how the relevant family law authorities (Child Care and Protection Board, judges, etc.) determine whether there has been partner violence or child abuse, what methods they use to assess the risk of violence, and how the pilot on methods for truth finding and risk assessment in high conflict divorces has been followed up upon.

In general, they suggest that the Committee ask the government what steps it intends to take for bringing its law and practice in accordance with Art. 31 and 51 of the Convention.

Partner violence as a contra-indication for joint custody

The NGOs are of the opinion that partner violence should act as a contraindication for joint custody and a show-stopper in decisions regarding parental access. If the woman is the main caregiver of the children, the rule of thumb should be that she gets sole custody and the abusive partner can only get joint custody after he has proven that he has adapted his behaviour over a number of years and takes proper care of the interests of the children. When there have been incidents of violence, a risk assessment should always be carried out. In addition, judges in family courts should receive mandatory training on domestic violence, joint custody, continued violence after a divorce and how to deal with visitation rights.

The NGOs suggest that the Committee ask the government if it is willing to initiate a change in the law to establish as a rule of thumb that, in cases of domestic violence, the victim gets sole custody of the children, at least until the perpetrator demonstrates a change in conduct.

52. Child protection agencies do not sufficiently take domestic violence into account

The Child Care and Protection Board, Youth Care agencies and family court do not sufficiently take a background of domestic violence into account in cases of custodial placements. Women are easily seen as ‘bad mothers’, for example, because the children notice her stress, and prejudices and gender stereotypes often lead to child protection measures to the disadvantage of the mother. In cases of domestic violence, children are occasionally placed outside of the home ‘because of violence between the parents’, for which both parents are considered equally responsible. Sometimes mothers are told to not make ‘false accusations’ because otherwise their children will be taken away.

The NGOs suggest that the Committee ask the government which measures it intends to take to ensure that child protection and youth care agencies apply a gender-sensitive approach in situations of domestic violence and how it will make sure that these agencies are properly trained

⁵⁹ CEDAW/C/NLD/CO/6, section 43a.

⁶⁰ Ruiter, Corine de et al (2017), “Mythen over conflictscheidingen: Een onderzoek naar de kennis van juridische en sociale professionals”, (Myths about conflict separations: An investigation into the knowledge of legal and social professionals”, Family & Law, May 2017. See also the [website of Stichting Zijweg](#).

⁶¹ Holtzworth-Munroe, Beck et al (2014), *Mediator’s Assessment of Safety Issues and Concerns* (MASIC).

to do so.

ART. 33-36: CRIMINALISATION OF GENDER-BASED VIOLENCE

53. Domestic violence is not criminalised as a separate crime

Domestic violence is not a crime in and of itself. Domestic violence is covered by general provisions of criminal law, such as common assault, causing grievous bodily harm, manslaughter, murder, rape, sexual assault and stalking. Because it can be labelled under various crimes, it is impossible to get insight into what happens with reports of domestic violence to the police. Research shows that the actual outcomes of most cases of intimate partner violence seem to be dominated by dismissals and a persistent gap between the number of complaints and the number of convictions.⁶²

The NGOs suggest that the Committee ask the government whether it is considering criminalising domestic violence as a separate crime and if not, why not.

ART. 32 & 37: FORCED MARRIAGES

54. Lack of adequate legislation on forced transnational marriages

The NGOs are concerned about girls/women, both underaged and 18+, who are taken by their parents under false pretences to another country to be married off against their will. The parents return to the Netherlands with their daughter's passport, leaving their newly married daughter behind with her in-laws. Often the girls are not allowed to attend school, are raped repeatedly by their husbands and imprisoned in a marriage they cannot escape from (marital captivity). In the rare cases where the girls/women manage to escape, they experience severe difficulties acquiring a new Dutch passport or (in case of another nationality) a new residence permit, and even if they succeed in obtaining an annulment of the marriage contract in the Netherlands, the marriage contract in the other country is not dissolved.

The NGOs suggest that the Committee ask the government to provide information about its policies and practices in preventing and combating forced transnational marriages and marital captivity, including information about the role the embassies play in offering shelter and assistance in returning back home.

ART. 36: SEXUAL VIOLENCE

55. Criminalisation of sexual contact without consent

Currently a review of the criminal law on sexual offences (the so-called 'zedewet') is being carried out. The NGOs are of the opinion that in the framework of this review the government should investigate whether it is feasible to adopt the so-called 'consent model', that is the criminalisation of sex without consent, as in Spain and Sweden. The NGOs think this is more in line with the legislative measures Art. 36 prescribes. Currently, for non-consensual sex to be treated as a criminal offence, force or coercion must be proven.

The NGOs suggest that the Committee ask the government to investigate whether it is feasible to include non-consensual sex as a criminal offence in the Criminal Code, thus shifting from the current 'coercion-model' to a 'consent-model'.

ART. 40: SEXUAL HARASSMENT

56. Limited knowledge of new online forms of sexual harassment

With the growth of the Internet and social media, new forms of sexual violence, stalking and bullying have developed as well. These include sexting (publication of sexually oriented photos or videos which were shared in confidence via social media or websites), revenge porno (sexting with the motive of revenge), sextortion (using sexually oriented material often obtained under false pretences as a means

⁶² Lünnehan, Katinka, et al (2016), *The Protection of IPV victims: file analysis and victim interviews, The Netherlands*. Verwey-Jonker Instituut, INASC (Improving Needs Assessment and Victim Support in Domestic Violence Related Criminal Proceedings), co-financed by the Criminal Justice Program of the EU, p. 14.

of extortion), grooming, spreading recordings of sexual violence online, and posting of sexual messages online, e.g. 'slut shaming'. Professionals, including the police, often have limited knowledge of these new phenomena and the actions that can be taken to deal with them.

Online sexual harassment disproportionately affects women and girls, and current data indicate that it is more often committed by men and boys. Victims' complaints are often not taken seriously or are not followed up on, and as a result, the harassment can sometimes go on for years.⁶³ To address online sexual harassment, it is important to increase police expertise and adapt the current legislation. Such measures could also increase the willingness of victims to report and have a deterrent effect on potential perpetrators. In addition, online sexual harassment should be part of the policy on cybersecurity. Currently, a new provision in the Penal Code is being proposed to punish the abuse of sexually oriented visual material.

The NGOs suggest that the Committee ask the government whether it is considering additional legislation and what steps it intends to take to improve knowledge by the police and other relevant professionals on these new forms of gender-based violence.

CHAPTER VI – INVESTIGATION, PROSECUTION, PROCEDURAL LAW AND PROTECTIVE MEASURES

ART. 49 GENERAL OBLIGATIONS

57. Relevant authorities lack knowledge on various forms of gender-based violence

There is a lack of knowledge among municipalities, the Public Prosecution Service and the courts about forced marriage, marital captivity, abandonment, human trafficking and exploitation of women for purposes other than prostitution, online stalking and other forms of digital sexual harassment. That is one of the reasons why few complaints about these forms of violence are filed.

The NGOs suggest that the Committee ask the government which measures it intends to take to increase the knowledge of the relevant judicial actors on the different forms of gender-based violence.

58. Separating anti-trafficking units and immigration police

Since the reorganisation of the police into one national police force, the anti-trafficking police units have been incorporated into the immigration police. This has strengthened the focus on immigration law rather than on protection and assistance of victims. This development is reinforced by a general attitude of distrust against foreign trafficking victims and West African victims in particular: it is assumed that they just abuse the B8-procedure to obtain a residence permit.⁶⁴ This is reflected in expressions like "Nigerians are Liegerians". There is no evidence to confirm such assumptions. Nevertheless, they have led to a series of measures to combat the supposed abuse of the B8-procedure, which have weakened the position of victims of trafficking.⁶⁵

According to lawyers and volunteers who support victims of trafficking, the immigration police often show verbal and non-verbal disinterest during official hearings. As one of the consequences, there have been hardly any large-scale criminal investigations into the trafficking of West African women and the protection of West African victims is below standard. A similar problem exists in relation to (potential) victims in immigration detention. Moreover, shifting human trafficking to the immigration police does

⁶³ See for instance on digital stalking: <https://www.rtl.nl/gemist/peter-r-de-vries-internetpesters-aangepakt> (Internet bullies addressed)

⁶⁴ B8 refers to the number of the chapter in the Immigration Circular on the rules for residence permits for victims of trafficking. See government report IV 2.4 p.43/44

⁶⁵ Parliamentary Papers II 2011/12 28 638 no. 57. Measures include the abolition of the right of trafficking victims to remain legally in the country when initiating a legal procedure against the decision not to prosecute the case; prosecution of victims themselves because of 'false statements', and a pilot on the accelerated resolution of applications for a (temporary) residence permit 'without prospect'.

not fit with the reality since, according to the figures of the National Rapporteur on Trafficking in Human Beings, the majority of trafficking victims are Dutch or EU citizens.⁶⁶

The NGOs urgently recommend separating the anti-trafficking police units from the immigration police and re-incorporate them in the criminal police.

59. Hardly any gender-awareness in the judicial system

Police and justice officials do not sufficiently acknowledge the fact that gender plays a role both in the type of crimes against women and men and in the way women and men are treated. Gender stereotypes influence how people are treated, for example, the idea that women are always victims and men always perpetrators. On the other hand, there is insufficient knowledge on the role of power relations and hidden coercion mechanisms, as reflected in the treatment of domestic violence as a 'conflict divorce'. A common mechanism is, for example, that if the woman files a complaint about domestic violence, the (ex-)husband files a counter-complaint, and as a result, the police treat the situation as a gender-neutral conflict between (ex-)partners for which both are presumed equally responsible (*see also section 51 and 52*). Another example is that victims of so-called 'loverboys' are removed from their homes and alienated from their parents and social environment, while the perpetrators walk free. These experiences do not help to make victims more resilient.

Research shows that professionals working in victim support services, particularly domestic violence experts, seem to have clear insight into the (sometimes contradictory) needs of victims. Professionals working in public prosecution, judges and police officers, however, often stress that both the victim and the perpetrator are responsible for the violence and both need help. Prosecutors and lawyers who are not specialised in domestic violence are generally not conscious of the needs of victims and tend to consider only the more legal aspects of the incidence.⁶⁷

The NGOs suggest that the Committee ask the government which measures it aims to take to increase understanding of gender-based violence among the police and other relevant judicial authorities and how it is going to monitor the results of such measures.

ART. 50: IMMEDIATE RESPONSE, PREVENTION AND PROTECTION

60. Treatment of victims by the police: the need for specialised police officers

The police register around 65,000 incidents of domestic violence per year. According to estimates, this is about 12% of the actual number of domestic violence cases.⁶⁸ One of the reasons for this low percentage is the way the police treat victims. Experience shows that there are major differences in the way the police treats, on the one hand, 'moral law' case (cases that fall under the criminal law on sexual offences, like rape and sexual child abuse) and, on the other hand, cases of domestic violence and stalking.

'Moral law' cases are dealt with by specialised police who are experienced, understand safety issues, and generally behave in a proper manner. However, reports of domestic violence or stalking must be filed with the regular police, which often lead to negative experiences. Victims report being sent away, discouraged from filing a complaint or being told that the case is not serious enough, the police refusing to take down the complaint, or failing to take any further action. Other complaints include a general attitude of distrust towards victims, victims being accused of making false statements, and victims being confronted with stereotypes and prejudices, e.g. that the violence was 'the victim's own fault', 'men have a right to sex in a relationship', or 'emancipated women cannot become a victim'. In a 2016 study, the majority of the victims surveyed felt they were not understood or heard by the police. According to them, the police misjudged the domestic violence situation and failed to seriously

⁶⁶ National Rapporteur Trafficking in Human Beings and Sexual Violence against Children (2015), *Mensenhandel in en uit beeld, Update cijfers 2010-2014* (Human Trafficking in and out sight, Update figures 2010-2014).

⁶⁷ Ibidem note 62, p. 49-50.

⁶⁸ Source: website of the police <https://www.politie.nl/themas/huiselijk-geweld.html>. (Themes Domestic Violence.)

question them when filing the report.⁶⁹ Often there is a lack of sensitivity towards the victim's position, their dependence on the perpetrator and the safety risks involved, for example, when the perpetrator finds out that the victim has pressed charges. The lack of awareness of safety risks may put victims in immediate danger, for instance, when the police or *Safe at Home* (which can be informed by the police) contact the perpetrator without realising the risks or informing the victim. The NGOs are of the opinion that complaints about domestic violence and other forms of gender-based violence should always be dealt with by a specialised police officer who has expertise on domestic violence and other related crimes and who is trained to assess the safety risks.

The above described problems have only gotten worse since the police were reorganised into one national police force. This reorganisation has led to a considerable loss of expertise on domestic violence and other forms of gender-based violence. Although there are initiatives to improve the situation,⁷⁰ the problems persist.

The NGOs suggest that the Committee urge the government to ensure that complaints about domestic violence, online stalking and other forms of gender-based violence are dealt with by specialised police officers and that a standard risk assessment be carried out. They also recommend asking the government to put a system in place to monitor the number and type of domestic violence incidents reported to the police, including (ex-)partner violence and stalking, and how these cases were dealt with, and to evaluate the effectiveness of measures taken to address the above-mentioned problems.

61. Fear of negative consequences of reporting violence to the police: undocumented women and sex workers

The NGOs are of the opinion that all victims should be able to safely report violence to the police, independent of their residence status, work or other status, and without fear that their personal data will be shared with other agencies or private persons, such as the immigration police, the tax department, child protection agencies, employers, housing associations or landlords. Moreover, victims should be able to trust that complaints will be taken seriously and that they will be treated respectfully.

The NGOs recommend that in order to ensure that all groups of women, including those in vulnerable and marginalised positions, can safely report violence to the police, special liaison police officers are appointed to which victims can safely report without fear that their personal data will be shared with third parties.

Undocumented women

Most of the time, undocumented women do not dare to report violence out of fear of being detained or deported. Official policies hold that undocumented women should be able to safely report to the police without risk of deportation; however, these policies only exist on paper and are not structurally embedded into the police's daily practice. In most cases, both the police officers and the undocumented women themselves are not familiar with these policies.

The NGOs suggest that the Committee ask the government what steps it intends to take to ensure that undocumented women who become victims of domestic or other forms of gender-based violence can safely report to the police without fear for arrest, detention and/or deportation. This should include ensuring that both police and undocumented women are aware of the official policy.

⁶⁹ Ibidem note 62, p. 54.

⁷⁰ For example, to improve interagency cooperation between the police, Public Prosecutors Office and Safe at Home, and better inform victims. See for instance the folder on stalking and what can be expected from the police: <https://www.movisie.nl/publicatie/u-wordt-gestalkt>

Sex workers

According to recent research, only one out five sex workers who were victims of a form of violence during the last 12 months reported the incident to the police.⁷¹ A major reason for this is that the victims are afraid of facing negative repercussions when the police or other authorities discover that they are sex workers.

In many cases, they are afraid that their work will become publicly known, and they want to protect their children and family. Some fear being punished themselves. Other reasons for not reporting include the fear that the police will inform the housing association or landlord about their work and they will be evicted from their homes, or that they will be forced to stop working and lose their income. Some women are afraid that the police won't take them seriously because they are sex workers or that pressing charges has no use. Sex workers report, e.g., that the police refused to record their complaint because they had gone to the client's home voluntarily or that the police started to debate whether sex workers can be raped. Sex workers who work in licensed brothels do not report violence from clients for fear that the brothel owner will lose his or her license, as there already is a serious shortage of legal, licensed working places. Sex workers who work independently at or from home do not report for fear of fines, being publicly outed as sex workers, or losing their homes, work and income, as most cities forbid home-based sex work. Sex workers are well aware of the fact that clients and criminals know that they are unlikely to report crimes to the police and that this increases the risk of violence.

In some cases, the police or public prosecutor demands that sex workers who have become victims of trafficking and exploitation quit prostitution and give up their work and income. For women who voluntarily choose to work in prostitution but in the course of their work became victims of trafficking and exploitation, this is a major barrier against pressing charges. Similar demands are not imposed on women or men who became victims of trafficking and exploitation in other labour sectors, such as domestic labour or horticulture.

The NGOs suggest the Committee to ask which steps it intends to take to ensure that sex workers can safely report violence, including trafficking in human beings, without fear of negative repercussions; that their complaints will be taken seriously and that they will be treated respectfully.

62. Forensic psychologists should be standard procedure in cases of human trafficking of a minor

According to recent research, a major reason why young Dutch victims of so-called 'loverboys' do not report to the police is fear of revenge from the traffickers and their networks. Other reasons are that they do not always see themselves as victims and that the criminal procedure can be long and burdensome.⁷² The NGOs recommend using forensic psychologists in cases of human trafficking of minors and investing in ways to reduce the victim's fear of revenge and means to improve their safety.

The NGOs recommend that the government introduce forensic psychologists as standard procedure in cases of human trafficking of minors.

63. No reporting of incidents of violence against female asylum seekers

One of the problems with respect to violence against female refugees in asylum seekers' centres is that incidents of violence are not reported to the police. The police, on the other hand, complain that they are not allowed to enter the centres and that victims may be moved to another location in the meantime. Another aggravating factor is the lack of independent confidential counsellors in the centres.

The NGOs suggest that the Committee ask the government which measures it intends to take to

⁷¹ Aidsfonds (2018), *Sekswerk en geweld in Nederland* (Sex Work and Violence in The Netherlands).

⁷² CKM/Fier (2018). *Aangifte doe je niet. Een studie naar factoren die een negatieve invloed hebben op de aangiftebereidheid van Nederlandse, minderjarige slachtoffers van seksuele uitbuiting* (You do not report to the police. A study into the factors that negatively impact the willingness of minor Dutch victims of sexual exploitation to press charges).

address violence against female refugees in asylum seekers' centres, including the appointment of independent confidential counsellors, and to ensure that incidents of violence are reported to the police and that the women concerned receive the protection and assistance they are entitled to.

ART. 51: RISK ASSESSMENT AND RISK MANAGEMENT

64. Risk assessments are not a standard part of the response to domestic violence

The carrying out of a risk assessment is not included in the standard response to domestic violence, nor is it included in decisions on custody and visitations rights (*see also section 51*). Research of police files on intimate partner violence shows that the domestic violence cases brought to the Public Prosecution Service (PPS) mostly involve physical violence where little to no injury has occurred.⁷³ In half of the cases, the incident was the first one reported to the police. Legally speaking, this does not constitute serious violence: the suspect is a first offender of a minor crime.

Although legally it may concern a minor offence, this does not preclude the need for a risk assessment, given the escalating character of domestic violence, as known by justice professionals and police officers specialised in domestic violence. They are acquainted with the risk factors and know that cases of intimate partner violence may start with a 'minor offence' but can develop into much more serious crimes. The file analysis showed, e.g., threats to kill or severely injure the victim's children, attempts to strangle the victim, and the use of battle or stabbing weapons. Most perpetrators have a history of violent and non-violent crimes, and the majority of victims live in fear. The interviews with the victims and professionals who work with victims showed that victims often do not feel acknowledged, and oftentimes the police do not carry out further questioning, f.e. about the history of violence. Oftentimes, the seriousness of the violence is not properly assessed because the focus is on the incident itself; the context within which the violence takes place is left out of the picture.

The NGOs suggest that the Committee urge the government to ensure that a risk assessment is made standard procedure in cases of domestic violence, stalking and other high-risk forms of violence.

ART. 52: EMERGENCY BARRING ORDERS

65. Link temporary domestic exclusion orders to the family instead of the location

Currently, temporary domestic exclusion orders are linked to a location and current partners. This provides insufficient protection against ex-partners and in cases where the victim has moved to a new house. The problems now persist in the context of visitation rights and custody after a divorce. This is in violation with the EU Directive,⁷⁴ which stipulates that barring orders follow the family.

The NGOs recommend the government to bring the Temporary Domestic Exclusion Ordre Act in accordance with the EU Directive and to link the order to the family instead of the location and include protection against ex-partners.

ART. 57: LEGAL AID

66. Restrictions in access to legal aid for victims of domestic violence

According to national law, victims are entitled to free legal aid if the case is prosecuted and if there have been serious psychological or physical injuries that are permanent and/or require a long time to recover and that were caused by a violent crime, sexual abuse or sexual violence. In many cases, victims of domestic violence do not meet this threshold and therefore are not entitled to free legal aid. However, they may qualify for state-funded legal aid, which means they have to pay a personal contribution, depending on their income.⁷⁵

Victims of domestic violence who want to divorce must follow several legal procedures. For each

⁷³ Ibidem note 62, p. 5.

⁷⁴ European Protection Order Directive 2011/99/EU

⁷⁵ See <https://www.rechtsbijstand.nl> (Legal counsel)

procedure, they must to pay again the personal contribution. Moreover, due to cuts in state-funded legal aid, the personal contribution for employing a lawyer in family cases has more than tripled. On top of that, the lowest personal contribution in family cases is almost twice as high as that in employment cases.

Currently, the government is discussing a new system for the state-funded legal aid. According to a recent national newspaper, one of the options under discussion is to exclude family law, labour law, civil law and administrative law from the legal aid system. In other words, to abolish state-funded legal aid in these fields of law.⁷⁶ Later this year final proposals will be submitted to the Council of Ministers and to the Parliament.

The NGOs suggest that the Committee ask the government how it will ensure that victims of domestic violence continue to have access to legal aid considering the new proposals for state-funded legal aid. The NGOs also suggest that the government be asked if it is willing to set the personal contribution for family cases at the same level as that for employment cases.

67. Lack of specialised lawyers who take state-funded cases

Because of the cuts in state-funded legal aid over the last ten years, there are fewer and fewer specialised lawyers who are willing to take up state-funded cases. The fees are low and the number of hours that lawyers get reimbursed in complex cases is far too little. The lawyers who still do these kinds of cases are fully occupied or overburdened, and as a result, they are not able to devote sufficient time to every case. This makes it increasingly difficult for victims of domestic violence and other serious forms of gender-based violence to find a good lawyer. This is even more so when the victim is in need of a lawyer who is trained in both family and migration law. If the victim does find a lawyer who is able and willing to take the case, this lawyer often has only time to write the necessary legal documents; generally, he or she does not have time to study the complete dossier and properly inform clients about their legal position. As a result, victims receive insufficient legal aid.

The NGOs suggest that the Committee ask the government which measures it aims to take to ensure that cuts in the legal aid system do not undermine access of victims of domestic violence and other serious forms of gender-based violence to a specialised lawyer.

CHAPTER VII – MIGRATION AND ASYLUM

ART. 59.1 RESIDENCE STATUS

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

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

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

The NGOs recommend that the government investigate what impact the prolongation of the period of dependency and the increase in the burden of proof to qualify for an independent residence permit has had

⁷⁶ NRC, frontpage 25 September 2018.

on the duration of violence and the decision of women to leave a violent relationship. The NGOs also recommend that the government automatically provide family migrants an autonomous residence permit after the dependency period has ended.

ART. 60 GENDER-BASED ASYLUM CLAIMS

69. Problems surrounding gender-based violence as grounds for asylum

In its report, the government states that gender-based violence is grounds for a refugee status and that the asylum procedures are gender-sensitive (VII.2). However, data on the number of women who have received asylum status based on gender-related violence is missing. The NGOs are concerned about the hostile and rigid political climate towards refugees, which is also reflected in the way female asylum seekers are treated.

There are several barriers in the asylum procedure that make it difficult for women to apply for asylum on the grounds of domestic and gender-related violence.⁷⁷ There are no legal or procedural guarantees to ensure that victims of violence can relate their experiences at their own pace and that they receive psychological support during this process. Although separate procedures and interrogations are policy, they are not always implemented. Lack of expertise and/or prejudices on the part of immigration officers and/or interpreters often inhibit women from talking about their experiences, especially in the case of LGBTI people.⁷⁸ However, asylum requests are rejected when women only relate their experiences with violence at a later stage. Despite the government's promises to Parliament, identification and investigation of experiences of gender-specific violence do not have priority during the rest and preparation period preceding the asylum procedure, nor during the procedure itself.⁷⁹ As a result, women are often directed to the extended asylum procedure at a late stage, or not at all. Another factor is the lack of privacy in asylum seekers' centres (particularly in emergency shelters). In addition, training programmes for immigration officers are short and/or limited in content.

The NGOs are very concerned about the large number of women whose asylum claims are rejected and who end up on the streets. Female refugees are not encouraged to apply for independent refugee status, neither by the IND nor by asylum lawyers. Information on the right to autonomous refugee status is lacking. In its report, the government states that even when a woman has a dependent status, she can still apply for an autonomous status in cases of violence. However, this means starting a procedure all over again.

The NGOs suggest that the Committee urge the government to take measures to address the aforementioned barriers and guarantee gender-sensitive asylum procedures in conformity with Art. 60 of the Convention, the UNHCR Guidelines, CEDAW General Recommendation 31 and 32, and the Resolution of the European Parliament on the situation of women refugees and asylum seekers. They also suggest asking the government to provide data about the number of women who have been granted asylum on the grounds of gender-related violence.

70. FGM not ground for asylum

According to Dutch policy, women at risk of genital mutilation can apply for international protection. However, in the experience of NGOs, women are only granted a 'B-status' which is dependent on whether there is a local 'alternative place of settlement'. The NGOs note that there is an increasing leniency in the interpretation of a safe 'alternative place'. For instance, the Immigration Circular states that victims from Sierra Leone do not qualify for a humanitarian residence permit since they are supposed to be able to flee to a 'FGM safe area' in Sierra Leone.⁸⁰

⁷⁷ IRCT (2016), *Falling Through the Cracks, Asylum Procedures and Reception conditions for Torture victims in the European Union*.

⁷⁸ Jansen, Sabine, COC (2018), *Trots of Schaamte* (Pride or Shame, LGBTI review refugee applications).

⁷⁹ Parliamentary Papers EK 31 994, *Amendment of the Immigration Act 2000*.

⁸⁰ Immigration Circular 23.5.2. *Flight and Location Alternative*, section C2/3.4. VC

Other obstacles include the extremely high burden of proof and the overemphasis on the alleged ability of mothers to protect their daughters from FGM and resist social pressure, when they themselves oppose the practice. Applications for asylum from Guinean mothers who fear that their daughters will be subjected to FGM are, e.g., rejected because, according to the government, girls do not run 'a real risk' of FGM if their mother is opposed. The Council of State has approved this argument several times.⁸¹ Critical remarks were made and questions were asked about this practice by the Committee on the Rights of the Child⁸² and European Court of Human Rights.^{83 84} This line of reasoning makes any application of opposing mothers hopeless. It also shows an incomprehensible lack of awareness of the enormous social pressure these mothers are under and fails to consider the consequences of refusal, such as social exclusion and physical and/or verbal violence. The designation of the mother as 'protective actor', regardless of her personal circumstances and background, also contravenes the EU Qualification Directive.⁸⁵

The NGOs that the Committee urge the government to classify FGM-related claims as grounds for 'membership of a particular social group' and to bring its policy in accordance with CEDAW General Recommendation 32, the UNHCR Guidelines on gender-related persecution and the EU Qualification Directive.

⁸¹ E.g. ABRvS 12 June 2015, 201410280/1/V2 and 201409630/1/V2.

⁸² UN Committee on the Rights of the Child, 3/2016 (K.Y.M. v. Denmark), 25 January 2018, *JV 2018/70* m.nt. M.J. Middelburg.

⁸³ ECHR, *Zenab Soumah v. the Netherlands*, Application number 61452/16 (and four other applications), cases communicated to the State authorities on 15 December 2017. See: <http://hudoc.echr.coe.int/eng?i=001-179963>

⁸⁴ CEDAW recently received an individual complaint on this issue, but did not deal with the case as the victim was granted residence status in the meantime (F.M., 89/2015, 7 November 2016).

⁸⁵ Vegter, Martin (2016), "*Gebrekkige bescherming van Guinese meisjes als moeder tegen besnijdenis is. Moeders wil is geen wet*" ("Inadequate protection of Guinean girls if the mother opposes FGM"), *A&MR* 2016 Nr. 3, p. 115-122; Middelburg, Annemarie et al., *Female Genital Mutilation/Cutting as a Ground for Asylum in Europe*, *International Journal of Refugee Law*, 2016, Vol. 28, No.3, 416-452.