

Definitief concept 2

Dutch CEDAW Network PM logo

Shadow Report by Dutch NGOs and CSOs to Information provided by the Netherlands in follow-up to the concluding observations of the Committee (CEDAW/C/NLD/CO/6/Add.1)

CONCEPT

December 2018 – January 2019

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. By mid-November the Dutch CEDAW Network learned through the website of CEDAW/OHCHR that the follow-up report had been submitted by the government and started a consultation process with NGOs. On 27 November 2018 it convened a meeting to discuss the government's follow-up report. Other experts from NGOs and CSOs lent their expertise through written submissions.

For the present shadow report the Dutch CEDAW Network has made use of the information contained in its recent NGO Shadow Report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence: [*"Joining Forces to Break the Circle of Violence Against Women"*](#) (30 October 2018). The Netherlands Institute for Human Rights published a Written Contribution to the Group of Experts on Action against Violence against Women in Domestic Violence (November 2018). Both reports are to be found on [the country page of the Council of Europe Istanbul Convention website](#).

The Dutch Ministry of Education, Culture and Science has funded the process by which this NGO and CSO shadow report was produced.

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

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Recommendation 22 (b)

Amend the Media Act in line with articles 2 (f) and 5 (a) of the Convention in order that gender role stereotyping is considered to be discrimination

According to the NGOs this recommendation is crystal clear and not too difficult to comply with. Several provisions of CEDAW create explicit obligations to address harmful gender stereotypes and wrongful gender stereotyping¹. Also, the NGOs remember the Dutch Minister of Gender Equality promising the Committee during the Constructive Dialogue in November 2016 to reconsider her initial refusal to amend the Media Act.

Now, instead of describing a process of reconsideration (i.e. consultation with Advertising Code Foundation (Stichting Reclame Code) and the Advertising Code Committee (Reclame Code Commissie), discussion in parliament etc.) the follow-up report (para 1-2) reiterates the earlier replies in the Addendum to the List of Issues and Questions (CEDAW/C/NLD/Q/6/Add.1) and the Ministers line of reasoning prior to her promise.

By describing in para 5 the self-regulation with respect to advertising in fact the government is denying its obligations under article 2 (f) and 5 (a).

According to the government report, the Netherlands intends only to examine how the representation and portrayal of women is evolving (para 3 and 6). The NGOs do not understand why the Dutch government is evading the issue, while the Dutch Advertising Code clearly states that advertising may not contain or promote *any form* of discrimination based on gender, race, ethnic descent, nationality, religion, disability, age or sexual orientation. Obviously, the Dutch government does not consider stereotyping as a form or a vehicle of discrimination, particularly when it comes to gender role stereotyping.

Comparative research shows that several countries guarantee the right to freedom of expression in their Constitution while at the same time condemning gender stereotyping and sexism as discrimination.²

The NGOs deplore that the Committee's recommendation is not implemented.

Recommendation 22 (c): Intensify engagement with relevant actors and allocate resources to finance effective awareness-raising campaigns to promote positive and non-stereotypical portrayals of women in the media and in advertisements and 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 in the State party

Representation in the Media Coalition

The NGOs commend the government for funding the *Representation in the Media Coalition* (para 4). In general the NGOs are positive about the fact that - after 20 years of silence on the issue - from around 2016 onwards the government has taken more interest in addressing gender stereotyping and image making, among others by funding research. However, the *Representation in the Media Coalition* is a short term project for less than two years (September 2017 – June 2019). In the view of the NGOs the duration of this project is way too short to ensure measurable progress with respect to positive and non-stereotypical portrayals of women. This is the more so, since recent data show that compared to 2010 the

¹ Art 2(f), 5, 10c and GR 25. See also OHCHR Commissioned Report, Gender stereotypes as a Human Rights violation. 2013, pp 21-29.

² <https://pilpnjcm.nl/wp-content/uploads/2015/12/150609-PILP-sexism-comparative-practice-memo.pdf>

percentage of women acting or participating in the different types of tv-programmes is declining. Moreover: in 2010 the Netherlands performed better than average in global and European figures while in 2015 it performed far below average!³ In other words: the Netherlands is facing a huge challenge in changing the current reality which begs for a substantial longer period of engagement, including funding.

The NGOs conclude that the recommendation to ‘intensify engagement as well as to allocate resources to finance effective awareness-raising campaigns’ is only partially implemented.

Slow start of study evolvment representation in the media

In para 6 the government explains being engaged in setting up a study of how the representation of women in the media is evolving (frequency and the way of portrayal). The NGOs applaud this initiative, even though it comes rather slow and late considering the Committee’s recommendation. They assume that the study will take the diversity among women into account (such as age, ethnicity etc.). The NGOs want to point out that its main value would lie in an annual or biannual recurring report of the state of affairs with respect to women’s representation in the media, as was recommended in Women Inc.’s report in 2017 ‘*Limited View – The Role of Media Makers in Image Making*’ (in Dutch: *Beperkt zicht - De rol van mediamakers in beeldvorming*).

No study on stereotypes in relation to gender-based violence

The government did not implement the Committees recommendation to conduct a study on the possible impact of stereotypes and the extent to which they exacerbate gender-based violence. There does not exist any Dutch research on this subject up till now. According to an exploratory desk study of the (Dutch) Alliance Act4Respect, research on the impact of gender norms and stereotypes can mainly be found in the US, especially with students as reference. Research on the impact of stereotyping and gender norms on gender-based violence in the Netherlands is therefore desirable according to the NGOs. Content wise the scope of research on gender stereotypes should be broadened to entail existing ideas of femininity and masculinity and especially its impact on gender- based violence. Interestingly, in its report to GREVIO the government underlines the need to combat stereotyped gender roles in the prevention of violence against women (III.2, p. 30). Research into the extent gender stereotypes exacerbate violence would perfectly fit in research that aims to understand the causes of gender-based violence - with questions such as ‘In which circumstances does domestic violence occur in the different communities?’ “What makes men hit?”, “Is impotence a factor?” “Is pregnancy a factor?” etc.

The NGOs deplore the formulation of para 7 by which again the impact of gender stereotyping is undervalued as well as the non-implementation of CEDAWs recommendation to conduct research on the impact of gender stereotypes.

³ *Overzichtsstudie representatie van vrouwen in de media*, Atria 2016.

Figures worldwide: <https://www.vidm.nl/profiel.php?pid=64&detail=persberichten&prid=2170#nav>

Figures the Netherlands: <https://www.vidm.nl/profiel.php?pid=64&detail=persberichten&prid=2046#nav>

Recommendation 24 (c): Systematically collect data on all forms of violence against women, disaggregated by age and the relationship between the perpetrator and the victim, as well as on protection measures, prosecutions and sanctions imposed on perpetrators, in particular in the municipalities of Bonaire, Sint Eustatius and Saba.

New studies and some improvement of data collection

The NGOs appreciate the new research and studies on different aspects of domestic violence and child abuse, as well as the measures taken to improve gender sensitivity in the new large-scale prevalence study (para 13). They also welcome the intention of the government to improve its registration of violence, but, miss any indication of a time path. The NGOs furthermore regret that the relevant research of The European Institute for Gender Equality (EIGE) on the subject, including new data in the *Gender Equality Index 2017*, is not mentioned by the government.

Both the recent NGO shadow report on the implementation of the Istanbul Convention as well as the written contribution of the Netherlands Institute for Human Rights to GREVIO criticise in detail the lack of systematic data collection in the Netherlands on all forms of violence against women.

Safe at Home

Para 10 describes the information collected by the *Safe at Home* organisations. The government acknowledges that the figures are not broken down by gender, notwithstanding the repeated recommendations of the Committee and despite its obligations under the Istanbul Convention.

According to the NGOs it is also questionable whether the data of *Safe at Home* are complete as many women who are victims of domestic violence, are hesitant to contact *Safe at Home* for fear of being accused of child abuse and therefore having their children taken away. *Safe at Home* is directly linked to the police and health care services. Data from women's shelters are lacking, as do figures about the number of women who have problems to access the shelters. Detailed data about the relationship between the victim and the perpetrator and about the number of incidents that do not lead to prosecution and/or sanctions of the latter are not included. NGOs conclude that further improvement of data collection is desirable.

All forms of violence?

Even though the Committee requested to report on *all* forms of violence, the government reports mainly about domestic violence and child abuse. Data on other forms of violence besides domestic violence and sexual violence amongst young people is lacking. Such as: sexual harassment and rape, cyber violence, street harassment, harassment at work, violence against lesbian and bisexual women and transgender and intersex people, women with headscarves, women with a precarious (dependent) residence permit and undocumented women. Figures about sexting, sextortion and other forms of online sexual harassment are missing in the report as well.

The government does not present figures about violence against sex workers, while recent research from SoaAids Netherlands and Proud (the Dutch sex workers organisation) shows a high prevalence of violence, varying from intrusive and unwanted questions to exclusion, discrimination, degrading treatment, theft, abuse and rape, coupled with an increase of the stigma on sex work.

Neither does the government present figures about the growing number of (online) threats and verbal sexual violence expressed to women human rights defenders and female journalists who speak out against discrimination, let alone the number of prosecutions of perpetrators by the public prosecution office.

Para 12 mentions a study published in 2018 about the nature and extent of abuse of elderly people, arguing that men and women are equally likely victims of such abuse, leaving aside the question whether the forms of abuse of elderly women and men are the same and whether the perpetrators are equally likely male or female.

The NGOs conclude that the government only partially implemented the Committee's recommendation on systematic data collection on all forms of violence against women and that an integral approach is still lacking. They suggest requesting additional information on the ways of data collection and on the data that are missing in the report, including data on other forms of violence than those included in the government report. Since the issue of disaggregated data collection clearly also will be a point of discussion in the dialogue with GREVIO during its forthcoming state visit, the Committee might also ask to be informed about the outcomes.

Bonaire, St. Eustatius and Saba

According to para 14 there is not yet any collection of data on violence against women in the municipalities of Bonaire, St. Eustatius and Saba. The NGOs note that instead of implementing the Committee's recommendation ('systematically', 'disaggregated ...') the government limits its ambition to - 'setting up an easily accessible reporting system'- and: 'attention will be paid to possible forms of registration'. The NGOs are of the opinion that starting from scratch on these islands offers a unique opportunity for a significant focus on unambiguous registration and a coherent comprehensive integrated system of data collection on all forms of violence against women, the demographics of the perpetrators of these forms of violence, and the relationship between victims and perpetrators.

The NGOs suggest the Committee to ask more information about the efforts to design a comprehensive integrated system of data collection and implementation of the reporting system.

Recommendation 36 (d): Intensify efforts to investigate, prosecute and sanction reported cases of pregnancy-related discrimination, including sexual harassment

Awareness raising instead of prosecution and sanctioning of pregnancy-related discrimination

The NGOs commend the government for the launch of the Pregnancy-Related Discrimination Action Plan (para 15). They note that in the plan no reference is being made to the Committee's recommendation and recall that NGOs, trade unions and the National Human Rights Institute for years have underlined the necessity of such an action plan, given the number of reported cases of this type of discrimination.

The NGO's welcome the information campaigns targeted at pregnant women (para 16): it is important that women know their rights. However, the chances that pregnant women claim their rights should not be over-estimated. Claiming rights vis-à-vis employers is in general a

stressful exercise which only few employees undertake, stress is not advisable for pregnant women. Moreover, the Work and Security Act (WWZ) restricts the period in which compensation for unfair dismissal can be claimed to two months after the termination of the employment relationship. An alternative is to sue the former employer before the civil court and claim material and immaterial damages, which is possible up till five years. A recent [overview](#) of the (few) court cases on compensation and/or material and immaterial damages in cases of pregnancy-related discrimination show that the chances of receiving a compensation which is significantly higher than the costs of the procedure are very low.

Limitations of the Inspection SZW / Labour Inspection

The expanding of ISZW's capacity as described in the government report (para 18) was needed and is appreciated. However, a temporary expansion of the ISZW's discrimination team with three inspectors, leading to 350 (2017) instead of 220 (2016) inspection visits of companies, is not very impressive in the light of the number of companies (some 130.000 with 5 employees or more). This is not to mention non-profit and public sector organisations that unfortunately also discriminate pregnant women. It is also minimal in the light of the number of registered cases on pregnancy-related discrimination (para 19), especially when it is known that most victims do not report. In only one! case ISZW fined the employer (it is not reported for what offense).

Discrimination is a criminal offense, which means that pregnancy-related discrimination could be prosecuted by the public prosecution service. As far as NGOs know, this possibility never has been explored.

The NGOs are of the opinion that more possibilities to sanction employers in cases of pregnancy-related discrimination should be created, for instance by establishing the possibility of filing a complaint of pregnancy-discrimination with the Inspection SZW, enabling ISZW to sanction and to make the company visits more targeted. Employers should be made much more aware that they can be fined when they discriminate against women.

No prosecution and sanctioning of sexual harassment

The NGOs conclude that the description in para 17 shows that the Committee's recommendation is not implemented. Without investigations, there will be no prosecutions or sanctioning. If not the government, other organisations do publish facts and figures. These show that nearly three quarters of all women have experienced sexual harassment during their life. In one out of three cases this happens at the workplace.⁴ The impact can be serious. It hampers the participation of women in the labour market and can lead to psychological problems. According to research commissioned by the Netherlands Trade Union Confederation FNV in 2017 nearly 50% of all workers experience sexual harassment at their job; 75% of whom are women. Less than half of them reports the violence. This number is even lower for migrant women whose residence permit and livelihood depends on keeping their job, such as female labour migrants, (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.

Bisexual people experience significantly more sexual harassment at the workplace: two or three more times as compared to lesbian, gay and heterosexual people. The SCP suggests

⁴All references for studies discussed in this section can be found in the reports to GREVIO (see preface), unless stated differently.

that this may be due the fact that bisexual people are more often women as compared to men.⁵ Transgender women are more prone to sexual harassment in every domain of their everyday life.⁶

In para 17 the government refers mainly to the responsibility of employers: they are responsible for policies on sexual harassment and the implementation thereof in the workplace. The sole task of the inspection SZW is to monitor the process with which an employer shapes this policy. There is no requirement to investigate its quality nor whether it is implemented in practice.

To the NGOs this seems a rather restricted interpretation of governmental responsibility. There is still no obligation for employers to include complaint procedures in their policy, nor confidential advisors. The latter do not have legal protection similar to the members of Workers' Councils. Recent research by FNV also shows that the majority of employees is not aware of what their employer does or should do to prevent sexual harassment or where to go when they are victims themselves.

Other research on the role and position of confidential advisors shows that more than two third of the internal confidential advisors had received any specific training (among external confidential advisors more than one third). Another problem is the limited mandate of confidential advisors. In addition, figures about prosecutions and sanctions of offenders are not available, which points to the need of proper investigation and research.

The NGOs conclude that the government did not implement the Committee's recommendation with respect to sexual harassment.

Pregnancy-related Discrimination and Sexual Harassment in other sectors

The NGOs note that the government's report is limited to efforts to investigate, prosecute and sanction reported cases of pregnancy-related discrimination and sexual harassment on the labour market.

However, pregnancy-related discrimination is also not uncommon in college and higher education and creates a substantial risk for female students of delaying their studies or dropping out (causing substantial financial problems due to the loan/bursary system). At the request of the Parliament the Minister of Education is now preparing legislation to introduce paid maternity leave for MBO-students, but not for higher education and universities. The Minister still sees no role for the legislature or for her department, even though [recent research from VU-University](#) shows that schools and universities have hardly implemented any measures to accommodate pregnancy and maternity and to prevent negative study-consequences for young female students.⁷ Students must themselves submit a complaint if they believe there is discrimination, which is highly demanding, especially students fear repercussions.

Another example of pregnancy-related discrimination concerns the case of a (pregnant) researcher who had submitted an application for funding of a research proposal at the Dutch Foundation for Academic Research (NWO – Nederlandse Organisatie voor Wetenschappelijk

⁵ SCP: LHBT Monitor 2018

⁶ Rutgers: Wereld van Verschil 2013

⁷ <https://www.vrouwenrecht.nl/2016/12/20/eleveld-anja-et-al-student-zwanger-en-gelijke-behandeling/>

Onderzoek). [Recently the Supreme Court](#) (Council of State, Raad van State) concluded after 2,5 years that NWO had acted discriminatory towards the applicant.⁸

With respect to sexual harassment the NGOs miss information in the government report about its efforts in the field of youth care, mental care and the care of disabled persons.

The NGOs conclude a lack of information to assess the efforts of the government with respect to pregnancy-related discrimination and sexual harassment in education and sectors other than the labour market.

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⁸ <https://www.vrouwenrecht.nl/2018/12/05/raad-van-state-nwo-onzorgvuldig-bij-subsidieaanvraag-zwangere-wetenschapster/>