

Appendix 5

The House of Representatives of the States General

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Session year 2007-2008

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Emancipation policy

LETTER FROM THE MINISTER OF EDUCATION, CULTURE AND SCIENCE

To the Speaker of the House of Representatives of the States General

The Hague, 5 November 2007

During the General Meeting on the international emancipation policy on 10 October 2007 I discussed with you the legal status and functioning of the UN Women's Convention. You asked me to confirm this information to you in writing, prior to the General Meeting on the Emancipation memorandum we will have on 7 November. I herewith provide you with this information.

The Netherlands ratified the Women's Convention in 1991. Pursuant to this ratification the Netherlands fully supports the starting points of the Convention. The Convention obliges countries to develop legislation and policy to drive out discrimination against women and implement suitable measures to promote the (personal) development of women.

Article 1 of the Constitution therefore lays down the ban on discrimination on the grounds of religion, philosophy, political views, race, gender or any other grounds. The Equal Treatment Act lays down the same prohibition.

From the time this Act came into effect in 1994 it has been possible to submit a complaint to the Equal Treatment Commission if someone feels he/she has been treated unequally.

The Netherlands also has a network of antidiscrimination agencies and reporting points (soon to cover the whole country), where citizens can submit complaints about unequal treatment and request advice.

It is important to distinguish the question of the State's commitment to the Convention from the question about the direct effect of the stipulations of the Convention.

The Convention contains norms that are binding under international law. This means that the State is obliged under international law to realise the rights stipulated by the Convention for its citizens.

As I indicated earlier, the State complies with his obligation. The report to the Convention Commission that is submitted every four years looks at this compliance in more detail. The conclusions of the Commission as a result of the reports make it clear how the Commission passes judgement on the protection and promotion of women's rights through legislation and policy in the Netherlands.

One of the particular mechanisms for enforcing these opinions is the 'naming and shaming' that takes place if the Convention and the opinions of the Committee are not complied with.

The question of whether the stipulations of the UN Women's Convention have a direct effect cannot be answered in a general sense. 'Direct effect' means that a stipulation is legally enforceable by an individual. Article 93 of the Dutch Constitution stipulates that stipulations in Conventions have binding force if *they can bind all individuals through their content*. The more generally stipulations are formulated, and the more active action they require on the part of the state, the less there is a question of direct force. After all, such stipulations allow the State room to make different policy choices. The question of whether a stipulation binds everyone and therefore has direct force is, in the final instance, determined by the Dutch courts in individual cases.

Incidentally, the Facultative Protocol in the UN Women's Convention, which came into effect for the Netherlands in 2002, gives individual citizens the right to submit complaints to the Committee in respect of all the stipulations in the Convention. To do so, the citizen in question must have exhausted the national legal route. If a citizen has submitted a complaint to the Committee, the Committee will evaluate whether the complaint is founded. After this the member state will be asked for a response. The Committee will then formulate its response. This response is not legally binding. So far, the Netherlands has received three complaints under the Facultative Protocol. Although in absolute terms this is a very small number, it is nonetheless substantial in relation to the very small number of individual complaints that have been submitted to the Committee on a worldwide basis so far. In my opinion this says something about the visibility of the Convention in the Netherlands. Incidentally, the Committee has so far not declared any complaints against the Netherlands founded.

The Minister of Education, Culture and Science,

R. H. A. Plasterk