

## The Netherlands

Written replies to the list of issues regarding the  
Convention on the Elimination of All Forms of Discrimination against  
Women (CEDAW)

raised in connection with

the fifth periodic report of the Netherlands (5e rapp CEDAW/C/NLD/5)

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### **Annexes:**

Annexe 1: Letter to Dutch CEDAW Network (10 December 2008)

Annexe 2: Letter to the House of Representatives of the States General (10 December 2008)

Annexe 3: (attached letter to the House of Representatives of the States General (5 November 2007)

## **General**

### **2.**

The ratio of project to institute subsidies was indeed increased in 2004. This policy decision was taken because project subsidies can be used for the priority themes of equal treatment policy and are aimed directly at the target group. Since 2004 gender equality policy has been designed to ensure that the available grants are used wherever possible to improve directly the position of vulnerable and disadvantaged women. The gender equality grants scheme has made it possible to reach a larger number of vulnerable women directly. The scheme's total multiyear budget was tripled from €6 million to €18 million in 2004. Cofinancing boosted the total amount available for the projects to €30 million. Under this new system the organised interest groups are still able to apply for grants, albeit only for specific activities for the target group. Grants have been awarded to 163 projects. The projects have been evaluated to identify any outstanding candidates for transfer to municipalities.

By the time the last projects are completed in 2011 approximately 120,000 women will have been reached in total. This means that they will have participated in various activities. The majority of the projects have focused on women and girls from ethnic minorities. The subsidised projects are spread throughout the Netherlands. Approximately one third of the projects have taken place in the Randstad conurbation in the west of the country and one third elsewhere in the Netherlands. The remaining one third have had a more national impact. Many of the projects have involved sensitive themes such as 'honour' crimes or been designed to encourage marginalised women to play a more active role in society.

Incidentally, the Dutch government has recently decided to expand the knowledge infrastructure by awarding long-term core funding to:

1. the National Women's Council (NVR) – an umbrella organisation for over 40 women's organisations;
2. WomenInc – a platform for a varied target group of women and for discussion of a wide range of equal opportunities topics.

No NGOs were involved in the preparation of the fifth report as it is, after all, a government report. The government awarded a grant to the Dutch CEDAW Network for the preparation of its own shadow report. Ten major women's organisations participate in the core group of the CEDAW Network. The network also consists of a wider circle of organisations and individuals that are involved with women's rights and use the UN Women's Convention for this purpose. The rapporteurs consult both the core group and outer circle of the network when drawing up the shadow report.

### **3.**

The Kingdom of the Netherlands has taken note of your request for more information on the situation in the Netherlands Antilles and Aruba. We are pleased to inform you that the Netherlands Antilles submitted both its fourth and fifth reports to your office on 4 May 2009 and that Aruba submitted its report on 1 July 2009 for your consideration at the 45<sup>th</sup> session in January 2010.

## **Legislative, policy and institutional framework**

### **4.**

Contrary to the assumption underlying the question, there is not necessarily a legal inconsistency between considering it to be the responsibility of the judiciary to determine whether a particular provision of the Convention is directly applicable in the legal order and signing the Optional Protocol to the Convention and thereby recognising the individual right of complaint in relation to all the rights set forth in the Convention.

As explained in the letter of the Minister of Education, Culture and Science to the House of Representatives of 5 November 2007 (see Annexe 3) on the subject of gender equality policy, the question of whether the State is bound by the UN Women's Convention should be distinguished from the question of whether provisions of the Convention have direct effect within the State.

The Netherlands is bound by international law to realise the rights set forth in the Convention for persons within its jurisdiction. By becoming a party to the Optional Protocol, the Netherlands also recognises the competence of the Committee on the Elimination of Discrimination against Women to receive communications from persons within its jurisdiction claiming to be victims of a violation of any of the rights set forth in the Convention.

Although the question of whether a provision has direct effect is ultimately determined in the Netherlands by the Dutch courts in individual cases, this does not interfere with the individual right of complaint introduced by the Optional Protocol. If a court decides in national proceedings that a particular provision of the Convention is not directly applicable in the legal order, this would not prevent the individual concerned from filing a complaint with the Committee.

The English translation of the letter of 10 December 2008 from the Minister of Education, Culture and Science to Parliament requested by you is enclosed as an annexe. The Netherlands would like to make use of this opportunity to correct an inaccuracy in that letter. It states that the three communications against the Netherlands filed with the Committee were all declared inadmissible. In fact, the Committee ruled in its decision of 29 August 2006 that communication no. 3/2004 was admissible. However, in this decision the Committee further concluded that the facts before it did not reveal a violation of the Convention. This inaccuracy therefore does not affect the consequences of this decision for the Netherlands. The Netherlands would also observe that in the meantime the Committee has ruled by decision of 1 April 2009 that a fourth communication (no. 15/2007) is inadmissible.

### **5.**

The UN Women's Convention is of major importance in improving the position of women throughout the world, including the Netherlands. The reports and constructive dialogue with the Committee help to keep us alert in matters relating to the implementation of the Convention. The government considers the views of the NGOs on the implementation of the UN Women's Convention to be important. This is why it commissioned the Dutch CEDAW Network to produce a shadow report to accompany the fifth government report to the CEDAW Committee.

The government also keeps the House of Representatives informed at all times about matters relating to the implementation of the Convention. Once the concluding comments are available, it will be apparent in what areas the CEDAW Committee considers that policy

improvements should be made by the Netherlands. I have already invited the House of Representatives to take advantage of this opportunity for an exchange of views on this subject. The concluding observations will also be sent to all government ministers for consideration in the formulation of policy.

Incidentally, it should be noted that the Dutch government introduced a national reporting obligation in respect of the UN Women's Convention in 1999. The national and international reporting obligations alternate. A single theme is chosen for the national report in order to ensure in-depth consideration of the subject matter. The theme for 2010 will be the health of women from ethnic minorities. The government will send the report and its response to it to the House of Representatives. Together all these reports and documents over a number of years provide an accurate picture of the implementation of the UN Women's Convention. The previous report dealt with the opportunities for boys and girls in primary and secondary education and was entitled 'Invisible discrimination in education'.

It is important for those professionally involved with matters covered by the UN Women's Convention to be familiar with its contents. Examples are judges, prosecutors and lawyers. Blanket dissemination of information about the Convention would be pointless. Members of the public wishing to find out about the Convention can obtain information from many sources (e.g. E-Quality, Aletta (former IIAV), CEDAW Network, government websites, etc.). As regards judges and prosecutors, the government would specifically observe that the training institute for the judiciary – the SSR – organises general courses on human rights both as part of continuing education and as a basic introduction for judges and prosecutors.

Continuing education for lawyers is provided by numerous organisations such as universities (in the form of postgraduate continuing education) and the Netherlands Bar Association (NOvA). One of the courses given by the Bar Association is on the subject of international court proceedings in national human rights cases. This covers the UN Women's Convention and deals with such matters as the interpretation of the Convention, country reports and the case law of the Committee as well as the sources of international law. Although the course is primarily intended for lawyers, it is also open to judges and prosecutors. On request, the course can be arranged for organisations.

## 6.

The present government has set aside an extra budget for gender equality policy. This will rise to €10 million in 2011. The total amount available during the present government's term of office (2008-2011) is expected to be around €60 million.

In the Netherlands, political responsibility for coordinating gender equality policy lies with either a minister or a state secretary. In the present government this role is performed by the Minister of Education, Culture and Science. The tasks of the coordinating minister for gender equality are:

1. to set the agenda for formulating the general framework for gender equality policy;
2. to help ensure that gender equality policy is reflected in the policy of government ministries;
3. to encourage and support the promotion of gender equality in society;
4. to coordinate the implementation by the Netherlands of the UN Women's Convention and the Beijing *Platform for Action* and to represent the Netherlands internationally in gender equality matters;

5. to provide support for gender equality by offering an adequate knowledge infrastructure is available; and
6. to monitor and assess progress in relation to gender equality in the Netherlands.

The Department for the Coordination of Gender equality Policy, which is now part of the Ministry of Education, Culture and Science, is the hub of the national gender equality machinery of central government. The role of the department is to support the Minister for Gender equality Policy. It currently has a staff establishment of around 25 FTEs (3.5 of whom are assigned to policy on lesbians, gays, bisexuals and transgenders (LGBT's)).

Responsibility for achieving general gender equality goals lies with each government minister responsible for the various policy areas concerned. Each ministry has a representative in the Interdepartmental Committee for the Coordination of Emancipation Policy (ICE). Some ministries also have an internal coordinating body to advise their own minister on gender equality issues relating to the area of competence concerned.

The interpretation and practical implementation of gender equality policy cannot be separated from the specific policies of the relevant ministries. This also applies to the international responsibility for gender equality matters of the co-ordinating minister, who coordinates the preparation of the national reports to the UN on the progress of gender equality policy in the Netherlands and also spreads the UN's responses to these reports to his fellow ministers. Sometimes these responses can prompt adjustments of policy by the ministries.

In 2007, each ministry submitted to parliament its own response to the final report of the Emancipation Auditing Committee and reported on its contribution to gender equality policy. In their contributions the ministries interpreted the conditions for ensuring that gender equality policy is firmly embedded and properly implemented in their own organisations. They have drawn up plans for the realisation of this policy which are dependent on five conditions: commitment on the part of administrative and political management, clear allocation of responsibilities, availability of expertise, application of instruments and existence of targets and resources. This method emphasises the responsibility and duty of accountability of each individual ministry. The reports show that gender equality policy is now more firmly embedded in their organisations and that the ministries are now more likely to take new initiatives. The ministries have indicated that they do not need the permanent support of the gender equality department in implementing this policy. In 2010, the government will hold a midterm review of gender equality policy in the ministries. The review will be conducted by the individual ministries themselves. Besides assessing the results achieved during this government's term of office it will identify new opportunities.

## 7.

An information campaign on the new provisions in the Equal Treatment Act regarding sexual harassment was started in May 2006. Information for employers and employees was put on the Internet. This provided answers to questions such as:

- what constitutes sexual harassment at work?
- what should the employer do to protect employees from sexual harassment?
- where can employees obtain advice about sexual harassment at work?

There is also a brochure entitled 'Psychosocial stress factors in the workplace'. Sexual harassment, aggression and violence, bullying and pressure of work are psychosocial stress factors in the workplace. Employers are obliged to have a policy in place to deal with them. The brochure describes what constitutes sexual harassment, aggression and violence, bullying and

pressure of work, what the employer should do about this and whom the victims can consult. Recently the Working Conditions Act has been amended. Since mid July 2009 an employer has a statutory duty to combat both direct and indirect discrimination in the workplace. This amendment has been achieved by adding discrimination to the list of items constituting psychosocial stressors in the workplace.

A nationwide anti-discrimination campaign was launched on 23 June 2009. The basic message is that everyone is entitled to protection from discrimination and that help and advice about discrimination are locally available to all. The campaign also emphasises that cases of discrimination or potential discrimination should be reported. The campaign lasted for six weeks and consisted of TV and radio ads, posters on bus and tram stops and newspaper advertisements. A campaign website has also been started ([www.discriminatie.nl](http://www.discriminatie.nl)) and a nationwide advice and complaint reporting telephone line has been opened.

The Municipal Anti-Discrimination Services Act entered into force on 28 July 2009 (Bulletin of Acts and Decrees 2009, 313). Under the Act municipalities are obliged to ensure by 28 January 2010 at the latest that residents have access to an anti-discrimination service.

Combating discrimination is a prime objective of this government. The right to equal treatment is one of the pillars of social interaction between citizens and between citizens and government. It is necessary to protect citizens from discrimination in order to ensure the proper functioning and protection of the rule of law in a democracy, social cohesion and relations within society. A good anti-discrimination infrastructure is therefore important. Citizens who feel that they have suffered discrimination must be able to seek easily accessible advice and assistance in their own area. The Municipal Anti-Discrimination Services Act contains an obligation for municipalities to provide their inhabitants with access to an efficient and independent anti-discrimination service. Municipalities are free to determine how they wish to organise an anti-discrimination service and whether it should be given additional tasks or merely required to provide assistance and register complaints. The new legislation guarantees access for all citizens to a local anti-discrimination service.

The authorities make €6 million available annually to the municipalities through the Municipalities Fund for complaint processing and registration. A survey to evaluate the implementation of the legislation will be carried out three years after its entry into effect.

Various measures can be taken by victims of sexual harassment and other forms of intimidation. For example, victims can complain to their employers. To discharge their obligation as a good employer and protect employees in the workplace, more and more companies have introduced special procedures for sexual harassment complaints.

Victims may also apply to the Equal Treatment Commission. This procedure is easily accessible and free of charge. Employers are legally obliged to protect employees from sexual harassment. If the Commission suspects that there has been sexual harassment, the employer must demonstrate that the complaint is unfounded. It must, for example, prove that it has done enough to prevent sexual harassment. Finally, a victim may institute proceedings before the court in order to claim compensation under civil law.

The Health and Safety Inspectorate can impose an administrative fine if an employer fails to discharge its obligation under the Working Conditions Act to put in place measures for the protection of employees from sexual harassment. Cases involving criminal offences such as indecent assault or rape may be reported by the victim to the police. For information and support victims can contact the Dutch Victim Support Organisation.

## 8.

The Multiyear Emancipation Policy Plan (2000) outlines goals to be achieved by 2010. The government wishes to encourage women's economic independence by making participation in the labour market the core of gender equality policy. The following progress has been made in achieving the goals formulated in 2000.

### \* Net labour market participation of 65% by women

The labour market participation of women increased from 53% in 2005 to 59.6% in the first quarter of 2009. This was due mainly to a rise in the number of women in full-time employment and part-time jobs of more than 24 hours a week. The labour market participation of women from ethnic minority backgrounds also increased from 42% in 2005 to 48% in 2008.

### \* Proportion of economically independent women in excess of 60%

Economic independence is defined in gender equality policy by reference to the norm of 70% of benefits under the Minimum Wage and Minimum Holiday Allowance Act (WML). In 2004, 42% of women could be classed as economically independent according to this criterion. The government's objective was for 60% of women to be economically independent by 2010. It has now been announced in the Equal Opportunities Memorandum (translated in the fifth report as 'Emancipation Memorandum') that this objective can no longer be achieved. In 2007, 45% of women could be classed as economically independent. This is due to the fact that the average number of hours worked by women, particularly low-skilled women, has not increased to the same extent as their labour market participation. The average working week of women rose from 24.2 hours a week in 2005 to just under 25 hours a week in 2007.

### \* Men's share of care responsibilities to reach at least 40%.

Men's share of care responsibilities rose by 0.5 of a percentage point to 35.7% in the period 2000-2005. This was a slightly larger increase than in the previous 5-year period (0.3%). Given the slow progress in the past ten years it seems unlikely that the 40% target will be achieved in 2010.

The Equal Opportunities Memorandum replaces the previous government's 2006-2010 Multiyear Emancipation Policy Plan. The starting point for the memorandum is that although much has been achieved in the area of gender equality, the process is not yet complete. The evaluation of what was achieved up to 2005 distinguished wherever possible between legislation, improvements in practice and cultural aspects. An overview of the evaluation was provided with the 'Responses to the list of issues and questions for consideration of the fourth periodic report of the Netherlands', 27 October 2006, and Appendix 1. The evaluation led to the preparation of the Equal Opportunities Memorandum, which was published in October 2007. The plans announced in this memorandum include various measures for increasing the labour market participation of women.

The new Equal Opportunities Memorandum deals with the need to end the perpetuation of stereotypical gender roles by narrowing the divide between women and men in terms of occupations and professions. Most of the initiatives are in the educational field. The Science and Technology Platform, which has been established to increase the number of science and technology graduates, has programmes designed to encourage girls to choose science and technology courses and careers. At the other end of the spectrum, some primary school teacher training colleges carried out a project to increase the number of male students.



Better career guidance and support can also help to reduce stereotypical choices. Career guidance and support at secondary schools will have to be put on a more professional footing. Steps are now being taken in practice and will take account of the differences between girls and boys.

The new Equal Opportunities Memorandum also takes into account the need for both men and women to reconcile the demands of work and care:

- the government will take various steps to reduce the marginal tax and social security burden;
- the government increased parental leave from 13 to 26 weeks from 1 January 2009; a parent who takes parental leave is eligible for an income tax credit;
- employers have been obliged by law to pay a contribution for day care since 2007, which has made it easier for parents to apply for childcare benefit; as the government has increased this benefit, day care has become cheaper in recent years;
- the Equal Opportunities Memorandum also mentions a benefits scheme for pregnancy and maternity leave for the self-employed. Self-employed women have been entitled to 16 weeks of benefits since June 2008.

### **Stereotypes and cultural practices**

#### **9.**

To emphasise that domestic violence can affect anyone, whatever their cultural background, the State party is taking various measures:

- a campaign has been mounted against domestic violence in the broadest sense and is designed to show that anyone, regardless of their cultural background, can be a victim of domestic violence; a large-scale publicity campaign that used the slogan *Nu is het genoeg* ('Enough is enough') was launched in 2007 and repeated in 2008 (further repeats are scheduled for 2009 and subsequent years); the aim of this national campaign is to encourage perpetrators, victims and witnesses of domestic violence, to seek assistance.
- to discover more about the scale and nature of the problem, the Ministries of Justice, Health and Education are carrying out a large-scale research project into domestic violence by either sex; the aim is to acquire a better understanding of the nature and scale of domestic violence, the characteristics of victims and perpetrators, how victims and perpetrators are treated, for example when they seek help, and the incidence of re-offending by perpetrators; the research will shed light on perpetrators and victims in various population groups in the Netherlands, including both native Dutch people and ethnic minorities.

### **Domestic violence**

#### **10.**

The Netherlands agrees with the Commission that domestic violence affects women disproportionately. The most common form of domestic violence is still relational violence against a partner or former partner, usually by men. This is due to the unequal power relationships between men and women. But men may also be the victims of domestic violence, for example in the case of honour-related violence.

The State party has taken good note of the Committee's remarks. This is why a gender analysis has been carried out in respect of the new plan of action known as 'The Next Stage'

for the period until 2011. The government is currently considering how this analysis affects the points for action under this plan and whether new points should be added. The plan itself already contains points for action, regarding gender issues. Examples include the following.

- As noted above, there is a gender-neutral campaign against domestic violence in a very broad sense. The aim of this national campaign is to encourage perpetrators, victims and witnesses of domestic violence to seek assistance. Besides this campaign for the general public, the problem of violence against women is being highlighted in articles in women's magazines. Special attention to the position of women in a domestic violence situation is pointed out in these areas.
- Extra attention will be given to prevention and early identification of domestic violence. To raise awareness the Ministry of Justice has developed a programme for schools called Stay in Love+. The aim is to prevent relational violence among young people, which may later lead to domestic violence. The programme, which includes discussion of the problem of the power imbalance in gender relations, consists of four lessons dealing with:
  - the attitude of pupils to wishes and boundaries in a relationship;
  - awareness of how social factors (peer group, parents and media) can influence attitudes and behaviour;
  - acquisition of skills to express wishes and observe boundaries;
  - correction of views about love and relationships.

At this moment the ministry of Justice is carrying out a research into the effectiveness of this programme. If the programme is proved to be effective, this method will be broader used.

- Women's shelters are currently focusing on improving the assistance provided to women (Women's Shelters Improvement Plan, see also the answer to question 13). The main aim is to increase their self-sufficiency so that they can build up their own lives again. A pilot project for the refuge of men who are seriously at risk (and who, by definition, cannot be admitted to women's shelters) was started in the four major cities (Amsterdam, Utrecht, Rotterdam and The Hague) on 1 July 2008. 40 places are available in these shelters. 35 are already occupied. The nature of the threat varies from honour-related violence to violence within a homosexual relationship.
- The Temporary Restraining Order Act entered into force on 1 January 2009. The aim of the Act is to allow temporary orders to be imposed on perpetrators of domestic violence in situations where there is an acute threat to the partner or children. This preventive measure makes it possible for victims (usually women and children) to remain in their homes rather than flee to a shelter. Instead, it is the perpetrator who has to move. It is hoped that barring perpetrators from the home will strengthen the resolve of the victims and encourage them to change their situation. For more information see question 13 below.
- The Ministry of Justice has also decided that a specific behavioural intervention should be developed for male perpetrators of domestic violence within heterosexual relationships. The Integrated Domestic Abuse Programme (IDAP) that was developed in the UK will be adapted to the Dutch situation. The programme pays specific attention to power relations between men and women.

- The Research and Documentation Centre of the Ministry of Justice is presently carrying out a large-scale research project into the nature and scope of domestic violence. One of the aims of this research is to obtain a better understanding of violence against women. This includes the forms of violence to which they are exposed, the identity of the perpetrators, the impact of the violence on the victims, the victims' need for assistance and so forth. For more information see question 11 below.
- Besides the measures to tackle domestic violence, the Netherlands also has special programmes for tackling other forms of violence which mainly affect women (e.g. the honour-related violence programme and the measures to stop female genital mutilation).

## 11.

### *a) Police figures*

For some years the Dutch police have carried out an annual analysis of the scope, nature and characteristics of domestic violence, and of victims and perpetrators. The results for 2006 and 2007 are set out below. The figures for 2008 are not yet available.

All Dutch police regions together registered a total of 63,131 incidents of domestic violence in 2006, which was 9.9% higher than in 2005. This compares with 64,822 cases registered by the police in 2007 (i.e. 3% higher than in 2006).

In 2006 the registered cases of domestic violence were classified in the following categories: physical violence (56.7%), psychological violence (14.8%), threatening behaviour (20.2%), stalking (4.0%) and sexual violence (4.3%). Most victims of domestic violence were women (83.8%). The great majority of women victims suffered physical violence (87.1%).

The figures for 2007 are as follows. The percentage of registered cases of domestic violence in the various categories was as follows: physical violence (45.2%), psychological violence (29.6%), threatening behaviour (16.9%), stalking (4.6%) and sexual violence (3.6%). The victims of domestic violence are mostly women (77%). These percentages are higher in the categories of stalking (80.9%) and sexual violence (83.1%).

In 2006 the violence was directed in most cases (72.4%) against the partners or ex-partners of the suspect. This compares with 70% in 2007.

The victims of domestic violence include many children. The figures show that in 2006 the victims in 9.8 % of the domestic violence cases reported to the police were under the age of 18. This figure was 11.5% in 2007. Most of these minors were victims of sexual abuse.

The figures are based on the police database. However, these are likely to be only the tip of the iceberg as many cases go unreported (the 'dark number'). Feelings of shame, fear and guilt stop the victims from reporting the violence. This is why a major national survey was started in 2008 to determine the true extent of domestic violence and the reasons for it.

### *b) National survey*

As just noted, the Ministries of Justice, Health and Education are carrying out a large-scale project to ascertain the true scale of domestic violence by either sex. The aim is to acquire a better understanding of the nature and scale of domestic violence, the characteristics of victims and perpetrators, how victims and perpetrators are treated, for example when they seek help, and the incidence of re-offending. The survey will also study the willingness of victims to report violence to the police.

This project is using the International Violence Against Women Survey (IVAWS) questionnaire wherever possible, so that the research findings can be compared with results from other countries. As the respondents include men, the questionnaire was adapted to this target group. The project consists of several parts:

- collection of domestic violence data by means of the capture-recapture method; the data will be extracted by linking existing databases;
- a study of victims of domestic violence by means of an online access panel; the respondent group (N = 6427) comprises men and women aged 18 and over; face-to-face interviews will subsequently be conducted with over 800 victims;
- analysis of a database of perpetrators of domestic violence; this database contains information on perpetrators who have been in contact with the police and courts in connection with one or more domestic violence offences; an online access panel consisting of 400 perpetrators of domestic violence has also answered extensive questionnaires.

It is still too early to report the provisional findings. The results of this nationwide survey are expected to be available in late 2009 or early 2010.

## 12.

The Temporary Restraining Order Act entered into force on 1 January 2009. The counselling process which starts immediately after an order is issued is a key element in this legislation. Counselling and social assistance are provided for all victims, including children. A programme designed to prevent re-offending by the perpetrator is also started. This involves tackling all the problems facing the perpetrator, such as addiction (alcohol and drugs) and inability to curb aggression. Help is also provided to victims, women and children. In the case of women this may involve working on empowerment.

All assistance under the scheme is provided on a voluntary basis, but wherever possible pressure is put on those concerned to participate. For example, if a perpetrator refuses to cooperate, this may be a reason for extending the order to 28 days.

Domestic violence is a crime that must be prosecuted and punished. The low conviction rate is due not to any pressure on partners to achieve reconciliation but to the technical difficulty of proving the offence. The authorities are basically intent on creating a safe situation for the victims of domestic violence by providing assistance and counselling. Their aim is not to save the relationship, but to stop the violence. The wishes of the victim are paramount: all efforts are directed to supporting the victim and any children in such a way that they can live in safety.

## 13.

Temporary restraining orders are a preventive measure (see answer to question 12). Such orders can be imposed where there is a *threat* of domestic violence; they are used as a rapid means of stopping the violence and preventing escalation. The Temporary Restraining Order Act entered into force on 1 January 2009. Where there are signs that domestic violence may occur in a family, a temporary order may now be imposed on the perpetrator to ensure that it is the latter, rather than the victim, who has to leave the family home. The aim is to pre-empt the violence by means of crisis intervention, for example by a Domestic Violence Advice and Support Centre, and to help the victim, perpetrator and any children to live a life free of violence, if necessary through the provision of assistance over a period of time. From 2009 onwards the regional authorities for shelters will receive € 8.6 million annually for crisis intervention, refuge and assistance following the imposition of domestic exclusion orders. The municipalities have taken vigorous action to discharge their duties since the introduction of the Act. The first five months of this year saw the imposition of no fewer than 708 orders, followed by the provision of assistance. Such assistance is essential if the intervention is to succeed in stopping the violence.

Another example of prevention is the *Stay in love+* project. This has been commissioned by the Ministry of Justice and is being implemented in some schools, for the time being as a pilot project. The aim is to use what is essentially a preventive approach to tackle the problem of violence between young people in relationships. This is based on the Dutch *Stay in Love* method, supplemented by elements of the Canadian *Safe Dates* prevention project that are of proven effectiveness. If the pilot seems to be effective, this method will be broader used.

To prevent re-offending the courts adopt a personalised approach to the sentencing of perpetrators of domestic violence. Major indicators in deciding on the sentence and its enforcement are the identity of the perpetrator, the nature of the offence and the risk which the perpetrator poses to society. The personalised approach is achieved by imposing special conditions as part of a suspended sentence with a view to changing behaviour. Scientifically proven behavioural interventions have been developed to exert a positive influence on the factors underlying delinquent behaviour. Examples of special conditions are aggression control therapy, out-patient treatment at a forensic clinic and stay-away orders. Special behavioural therapy for perpetrators of domestic violence is being developed and expected to be ready by October 2009.

Since the publication of the policy letter of the Ministry of Health, Welfare and Sport (10 December 2007) concerning the stepping-up of assistance and provision of shelter in cases of violence in dependent relationships, various results have been achieved and activities instituted. Here are some examples:

- The Ministry of Health, Welfare and Sport the Association of Netherlands Municipalities, the Shelters Federation, the Welfare and Social Services Providers Association and the Dutch Municipal Health Services have signed a statement in which they agree to work together to establish a comprehensive system of assistance and shelter for victims, children and perpetrators.
- This statement has now been elaborated in a plan of action for the period until the end of 2011. An important aim of the plan of action is to strengthen the Domestic Violence Advice and Support Centres. A general framework of the basic functions to be performed by all such centres in the Netherlands is being drafted. The Shelters Federation, the Dutch Municipal Health Services and the Welfare and Social Services Providers Association are starting a programme to improve the quality of the centres.
- A plan to improve women's shelters was started in October 2008. This consists of two projects: the first is designed to improve diagnostics and screening in women's shelters, and the second to develop a comprehensive counselling method.

To increase the capacity of women's shelters, the regional authorities for shelters were allocated € 1.7 million in 2008 and € 2 million in 2009. The Ministry of Health, Welfare and Sport will carry out a midterm review in the autumn of 2009 to find out how many extra places have been created in women's shelters since 2007.

There are various ways in which victims of trafficking, domestic violence and honour-related violence can obtain residence permits to protect them from further violence, irrespective of their immigration status and ethnic origin. Victims who are resident illegally can apply for legal residence either by invoking specific arrangements for victims or on humanitarian grounds, and those resident legally can apply for continued residence, if necessary also on humanitarian grounds.

Generally speaking, asylum applications can be made by persons who state they are at risk of violence. However, such applicants have to show that their own government is unable or unwilling to provide the necessary protection.

The Aliens Act Implementation Guidelines specifically mention domestic violence as a ground of asylum for immigrants from certain countries where there is a link between domestic violence and honour-related violence, discrimination against women or the absence of protection by the local authorities. Asylum may be granted to an asylum seeker who claims to be in danger of honour-related violence in his or her home country. This applies specifically to applicants from Afghanistan, Iraq and Turkey. A real risk of being subjected to female genital mutilation is also considered to be a ground for asylum in the Netherlands.

Applications for regular (non-asylum) residence permits may be made either by invoking specific arrangements for victims of trafficking, domestic violence or honour-related violence or on humanitarian grounds. The conditions for these specific provisions are as follows:

- Victims of domestic violence or honour-related violence who have a dependent right of residence may be granted a residence permit in their own right within three years on contacting the police and producing confirmation of the violence (for example from a women's shelter, a doctor or social services); after three years of residence a dependent residence permit may be replaced by a permit for continued residence, in which case no proof of violence is necessary.
- Victims of domestic violence who are resident illegally in the Netherlands may apply for a residence permit only on humanitarian grounds based on the specific and individual circumstances of the case.
- Victims of honour-related violence who are resident illegally in the Netherlands may be granted a residence permit if information provided by a specialised police unit establishes that they are under threat of violence in the Netherlands and cannot safely return to their country of origin.
- Victims of trafficking who are resident illegally in the Netherlands may be granted a residence permit (a 'B9 permit') if they cooperate with the judicial authorities for the duration of the proceedings against the perpetrator.

After the proceedings have ended the victim will qualify for a permit for continued residence in the following cases:

- if the victim's report or cooperation has led to a criminal conviction;
- if the criminal proceedings have not led to a conviction or if the perpetrator has been acquitted, but the victim has had a B9 permit for at least three years;
- in other cases if the victim cannot reasonably be required to leave the Netherlands on account of his or her specific individual circumstances; factors such as the risk of reprisals against the person concerned or his or her family and the lack of any prospect of social reintegration in the country of origin may play a role in the decision.

Victims of trafficking who do not cooperate with the justice authorities may be issued with a residence permit on humanitarian grounds depending on the specific and individual circumstances of the case. In practice, little if any use is made of this option.

All of the above-mentioned victims are entitled to victim support and legal aid.

#### 14.

Unfortunately we are unable to provide data on honour-related violence. Recording information about honour-related violence is difficult. Honour-related offences are basically general offences (such as threatening behaviour, deprivation of liberty, assault and murder) which are motivated by a desire to protect family honour. The databases of the various organisations concerned are not equipped to record the motives for general offences.

We cannot therefore provide data disaggregated by sex and ethnicity. However, information from the police and women's organisations that will enable us to gauge the number of reports and cases of honour-related violence is expected to become available at the end of 2009. Naturally, the 'dark number' will still be too large to allow us to draw any definite conclusions about the real scale of the problem. Although women are usually the victims of honour-related violence, boys and men may also be victims (just as women may also be the perpetrators).

A school project carried out by Albeda College and Twente Regional Training Centre was completed at the end of 2008. As a result of the project, a description of cases of honour-related violence, a guide for dealing with honour-related issues and a model plan for the formulation of policy have become available for educational institutions and municipalities to enable them to tackle honour-related violence in the educational sector. These products of the project have been distributed by the Ministry of Education, Culture and Science among schools and colleges.

#### **Employment, economic and social benefits**

#### 15.

The Services at Home Scheme was set up in order to boost the market for personal services. This creates jobs and enables domestic and home-care workers to gain work experience, thereby giving them a better chance of finding a regular job. Under the scheme, domestic and home-care workers can be hired relatively cheaply because the client is not required to remit taxes or social security contributions. The scheme covers the following types of activities in private homes:

- domestic help
- garden upkeep
- child minding
- pet minding
- odd jobs in and around the home
- taking and collecting family members and providing care, whether or not in the context of a personal budget
- home help for the chronically ill and the elderly and disabled
- running all kinds of errands, such as fetching groceries and medicines.

The Services at Home Scheme can be used, for example, to purchase personal care and home help under the Social Support Act. Under the Act those who qualify for assistance are entitled to assistance from municipalities to enable them:

- to run a household;
- to be mobile in and around their home;
- to use local means of transport;
- to meet other people and make social contacts.

The principle of entitlement to assistance is elaborated in individual provisions. Every person who qualifies for assistance is entitled to choose between a provision in kind or a personal

budget. The personal budget may be used to conclude an employment contract under the Services at Home Scheme, a contract with a firm or a full employment contract. A home help can be provided for domestic care. In such a case the person entitled to assistance concludes a contract with the home help. From 1 January 2010 the municipality will provide a personal budget from which to pay the home help. To make it easier for home helps to move on to a normal job, the Ministry of Health, Welfare and Sport established a grant scheme in 2008 under which home care organisations receive a grant for a year if they employ a home help. A similar scheme is being prepared for 2009 and 2010 as well.

Home helps who work for a maximum of three days (under the Services at Home Scheme) are entitled to:

- the statutory minimum wage for the work performed, plus an 8% holiday allowance;
- four weeks' paid holiday for full-time staff (otherwise pro rata);
- six weeks' paid sick leave (at least 70% of the salary and at least the minimum wage that is applicable; two qualifying days may apply if provided for in the employment contract);
- all statutory leave schemes.

If a home help works for a maximum of three days the client does not have to remit salaries tax and employer's national insurance contributions. This arrangement has been chosen so that private clients are not burdened with responsibility for keeping records and providing information to agencies that administer social security schemes. A client who wishes to dismiss a home help does not need a permit for this purpose. Home helps are not (compulsorily) insured under employee insurance schemes. They are therefore not entitled to benefits under the Sickness Benefits Act, the Work and Income (Capacity for Work) Act and the Unemployment Insurance Act. However, they can insure themselves voluntarily, for example with the Employee Insurance Agency. They are required to submit an income tax return to the Tax Administration. Home helps whose income is lower than the guaranteed minimum income may claim benefit under the Work and Social Assistance Act to bring their income up to the guaranteed minimum.

As far as compensation for health insurance is concerned, people who are over the age of 18 and have Dutch health insurance are entitled to healthcare benefit if their income does not exceed €32,502 per year (or €47,880 per year if they are cohabiting).

As far as the question of whether the Services at Home Scheme is in conformity with the Convention it should be noted that Dutch social security legislation is applicable to both men and women. The Services at Home Scheme is a special scheme for staff who perform duties in and around the home for private clients and is also applicable to both men and women. It is not known to what extent private individuals and home helps make use of the scheme as no separate records are kept.

## 16.

Data are not usually kept on the sex, age and ethnicity of people who provide care or support. However, this year saw the publication by the Social and Cultural Planning Office of a report entitled 'Women, men and informal care. Impressions and facts'. This compares a series of assumptions about the relationship between gender and informal care with objective research data. Here are some of the findings. Men and women in the 45-54 age bracket account for the highest proportion of informal carers. Informal carers are most likely to be women under the age of 65; this group accounts for 41% of the adult population and 52% of the informal carers.



However, the figures also show that a large proportion of informal carers (32%) are men under the age of 65. There is no difference in the percentages of men and women carers among the over-65s. Research does not show that women stop working to provide informal care, nor are they more likely than men to reduce the number of hours they work. The category of informal carers most likely to cut their working hours are those looking after a partner or children. The figures show a positive correlation between employment and informal care: the health of carers who have a job is better than that of those who do not.

The first evaluation of the Social Support Act is expected at the end of this year (as this is a first and hence fairly short evaluation period with a rather limited scope, a second evaluation will be conducted in four years' time, in 2013). This will also briefly examine what effect the Act has had on equal treatment. This will be done in two ways: first, a literature study will examine the labour market effects of the Act and, second, a survey by the Social and Cultural Planning Office among informal carers will study the burden to which they are subject and the possibility of combining employment and care. As far as the extent of the burden is concerned, however, no direct link can be made with the Social Support Act.

A correction should also be made here. The Social Support Act does not contain a provision under which household assistance is provided only if there is no one in the family network who can or should provide informal care. It follows that no such assessment has been made.

In the Social Support Act household assistance is defined as 'providing assistance with or taking over activities relating to the running of the household of a person or of the communal unit to which a person belongs'. Under the Social Support Act municipalities are responsible for providing social support to those entitled.

Under the Act those who are unable to live independently and thus qualify for assistance are entitled to assistance from municipalities to enable them:

- to run a household;
- to be mobile in and around their home;
- to use local means of transport;
- to meet other people and make social contacts.

When deciding on the measures, the municipality must take account of the character and needs of the applicant and his or her financial means.

Municipalities are to some extent free to determine their own policy. Most municipalities require the partner – whether male or female – or children of the disabled person to assist in some way in the housekeeping. However, municipalities may not refuse household assistance simply because there is a partner or children who can assist. If they refuse an application, they must give reasons for their decision. The applicant is then entitled to lodge a complaint and, if this too is refused, to apply to a court for review of the decision.

The changes of the Exceptional Medical Expenses Act have not yet taken effect. The State Secretary for Health, Welfare and Sport has given an assurance that the measures will not adversely affect vulnerable people such as those living in women's shelters. Together with the Care Needs Assessment Centre and the Shelters Federation, the Ministry of Health, Welfare and Sport is monitoring the implementation of the package of measures under the Exceptional Medical Expenses Act.

## 17.

The salary, pension and promotion rights of women working part-time are protected by law. Dutch law prohibits discrimination between employees on the grounds of a difference in working hours. This applies to salary, pension and promotion.

Article 7:648 of the Dutch Civil Code:

‘(1) Employers may not discriminate between employees on the basis of a difference in working hours in the conditions subject to which a contract of employment is entered into, extended or terminated, unless such discrimination is objectively justified. Termination of a contract of employment by the employer contrary to the preceding sentence or on the grounds that the employee has invoked the provision of the preceding sentence either at law or otherwise is voidable. Article 647, paragraphs (2) and (3), shall apply.

(2) Any provision contrary to paragraph 1 is null and void.

(3) Termination as referred to in the first sentence of paragraph 1 will not render the employer liable to pay compensation

(4) The Equal Treatment Commission referred to in section 11 of the Equal Treatment Act is may investigate whether discrimination as referred to in paragraph (1) is taking or has taken place. Sections 12, 13, 14, 15, 20(2) and 33 of the Equal Treatment Act apply *mutatis mutandis*’.

Under Dutch law, temporary special measures in accordance with article 4 of the Convention may be taken to accelerate the achievement of de facto equality between men and women on the above grounds. Such measures involve placing women employees in a privileged position in order to eliminate or reduce de facto inequalities, provided that the different treatment is reasonably proportionate to the intended aim. Temporary measures are permissible but not obligatory.

The Dutch government has established a Part-timePlus Task Force for the period from April 2008 to April 2010. The aim of the task force is to encourage women in the Netherlands who have part-time jobs of less than 24 hours a week to work more hours. It is looking for ways of helping women to make choices that will enable them to achieve this, thereby fulfilling their potential both personally and professionally. Pilot projects are being used to provide inspiring and recognisable examples for employers and employees. These involve:

1. carrying out representative surveys to identify wishes and determine how the number of hours worked by part-time staff could be increased in five industries;
2. using the results of these surveys in about 25 businesses and institutions to advise and assist employers and employees in increasing the working hours of part-time staff;
3. communicating the results of these pilot projects to employers and employees in these and other industries.

If the task force succeeds, women will not be the only ones to benefit. The change will also be felt in the Dutch economy and society as a whole. To achieve this goal, a coherent programme has been put in place. Interactive software, discussion meetings in provincial towns, research and high-profile conferences are some of the tools employed by the task force to achieve its vision.

Universities and research institutions are places where free, pure and pioneering research should take place. This is why these establishments have a high degree of autonomy. It is therefore only logical that universities should be solely responsible for the appointment of their personnel. Direct control by the Dutch government would not be appropriate. However, this does not mean that science does not benefit from a diverse workforce. Diversity contributes to the quality of science.

The Dutch government is aware that the proportion of women professors in the Netherlands is lower than in most other European countries. This also explains why the Dutch target is lower than 25%, which is one of the Lisbon objectives. The Dutch government is encouraging universities to appoint more women professors. Under the Aspasia programme, universities receive a premium of 100.000 euros as an extra incentive for promoting a woman to the post of associate professor or professor. Because of its success, the budget of the Aspasia programme is doubled to 4 million euros. The universities themselves are also aware of the importance of having more women professors and are taking appropriate steps. By signing the 'Talent to the Top' charter (for more women at the top) 11 of the 14 universities and 5 of the 8 university medical centres are showing a sense of urgency. Under the charter these institutions have committed themselves to appointing more women to top posts, defining targets and reporting on their progress.

## 18.

Every two years the Ministry of Social Affairs and Employment arranges for a survey of the gender pay gap by the Health and Safety Inspectorate. This shows that the gap is narrowing, albeit slowly. Caution is in fact necessary when establishing a link between the corrected pay gap and unequal pay/pay discrimination. These are two different concepts, each of which requires its own approach.

Unequal pay/pay discrimination is a legal concept. Employers and parties to collective agreements are barred by law from discriminating in relation to pay on grounds such as gender or origin.

The corrected pay gap is an economic concept. It is calculated by adjusting the pay gap (i.e. the difference between the average pay for men and women, expressed as a percentage of men's pay) to take account of background factors such as age, job grade and industry. The unexplained part of the corrected pay gap may be an indication of unequal pay within the meaning of the equal treatment legislation, although this is not necessarily the case.

The uncorrected gender pay gap in the private sector averaged 23% in 2006. This is largely attributable to differences in the backgrounds of men and women. The Health and Safety Inspectorate points out that in comparison with their male counterparts women workers:

- are generally younger;
- generally have a lower educational level;
- are more likely to work part time;
- are more likely to have a clerical or caring job;
- are more likely to have a low grade job;
- are more likely to have a flexible employment contract;
- are more likely to work in the health care and welfare sector; and
- are less likely to work in the manufacturing and construction industries.

The unexplained part of the discrepancy between rates of pay for men and women left after correction for background factors of this kind is the corrected gender pay gap.

The survey report of the Health and Safety Inspectorate shows that the corrected gender pay gap in the private sector was 6.5% in 2006. This means that where men and women were in the same jobs and had the same educational background, job grade, number of years' service etc. women earned 6.5% less than men in 2006. This was almost 1 percentage point less than the 2004 corrected gender pay gap of 7.4%.

As far as the gender pay gap is concerned, it is important to note that the Ministry of Social Affairs and Employment, with the help of the social partners, has developed and made available online instruments that can be used by employers and employees to determine whether they are paying or receiving unequal remuneration. People who think they are not receiving equal pay may apply to the Equal Treatment Commission. The Commission then investigates the case and gives its ruling.

Each year the Ministries of Social Affairs and Employment and Education, Culture and Science (Emancipation), with the help of the social partners and other organisations involved, organises an Equal Pay Day. The theme of the 2009 event, which was held on 31 March, was 'Equal pay in practice'. The meeting dealt with specific practical examples, pitfalls and possible solutions.

The following points should be made about the position of the public sector as employer. The public sector consists of various parts, each of which is responsible for its own remuneration policy. The remuneration system and workforce diversity are factors dealt with in the collective bargaining process in these individual parts of the public sector. Research into the gender pay gap within central government has shown that there are no significant differences after correction for legitimate forms of distinction. Research by the Ministry of the Interior shows that the uncorrected gender-based pay disparity in the central government sector is 15% compared with a corrected pay gap of 1.7%. The uncorrected disparity is mainly due to differences in the nature of the work, work experience and part-time employment. Diversity policy mainly focuses on ensuring that different groups of personnel are better represented among different types and levels of job. The research shows that the differences exist mainly among the older generation. Although the present policy will not be able to undo the existing differences in qualifications and experience, it may well eliminate the gender pay gap in due course.

#### **19.**

The Dutch government does not consider that the reinstatement of maternity benefits for self-employed women should be a ground for introducing a compensation arrangement for those women who were not entitled to a benefit in the intervening period. As it would be retroactive, such an arrangement would not enable the women concerned to stop working or to work less during the pre-natal or post-natal periods, which is the sole purpose of maternity benefit. An appeal court ruling on this subject is expected in October 2009.

#### **20.**

Since mid-July 2009 employers have had a statutory duty to combat discrimination in the workplace. Just as in the case of sexual harassment and bullying, the Health and Safety Inspectorate will take action if there are indications that employees in a given company or industry are being discriminated against by colleagues or managers. The introduction of the obligation is intended to make employers more aware that discrimination can occur and that they must take precautionary measures. If the risk of discrimination is apparent in a particular company or industry, the Health and Safety Inspectorate can require employers to pursue a policy designed to combat this. Employers who fail to do so are liable to a fine. The measures to tackle discrimination can be combined with those already being taken by employers to deal with other problems such as bullying and sexual harassment. Among the measures that employers can take are the appointment of a confidential adviser, the introduction of a code of

conduct and a complaints scheme, the provision of courses for employees, the registration of incidents and the provision of counselling after incidents involving aggression and violence.

The 2004 evaluation of the operation of the legislation on sexual harassment, aggression, violence and bullying in the workplace showed a rise in the number of employers who had made arrangements for the appointment of confidential advisers (53% of employers in 2004 compared with 34% in 2000). Large organisations generally have a confidential adviser and a complaints scheme or procedure.

Complaints procedures have not been made compulsory, but government information brochures cite them as an example of the measures employers can take. The Dutch government considers that the social partners are better placed to tackle such issues. At present, the social partners are cataloguing health and safety issues of relevance to their industry or sector. In these catalogues the employers and employees explain of their own volition how they are complying with the targets set by the government for health and safety at work. The aim is to provide an understandable and tailor-made description of risks and solutions. Each catalogue describes techniques and methods, good practices, standards and practical guidance for health and safety at work. Although the social partners themselves decide on the topics, it should be noted that the great majority of industries and sectors have included or will include psychosocial stress factors (i.e. aggression and violence, sexual harassment, bullying and pressure of work) in the list of issues. In addition, employers are currently often using professional agencies to assist them in tackling sexual harassment (and, increasingly, psychosocial stress factors as well). This is now common practice among large and medium-sized companies.

### **Situation of particular group of women**

#### **21.**

The net labour market participation of women from non-Western ethnic minority groups has increased substantially in recent years, rising from 42% in 2003 to 47% in 2007. The participation of Turkish and Moroccan women rose from 33% to 38% and from 31% to 37% respectively. The government's aim is to ensure that women who have not yet been reached become involved in society. Its 1001 Strengths Programme is designed to promote the labour market participation of ethnic minority women through voluntary work. They include many Moroccan and Turkish women. Voluntary work provides opportunities for self-development and participation and can also be a stepping stone to paid employment.

Many of the women taking part in the 1001 Strengths Programme have indicated that although they are glad of the opportunity to do voluntary work they wish to find a paid job. In practice, however, it is proving difficult for many women to make the transition to paid employment after the voluntary work finishes. In many municipalities a coherent plan to help women graduate from voluntary work to paid employment has still not become the norm. Agreements have been made with municipalities to strengthen their management role in this regard. They are receiving a central government grant for this purpose.

As from 2010, the co-ordinating Minister for Emancipation will invest extra in 6 large municipalities. These municipalities have implemented the 1001 Strengths Programme as a pilot. The aim is to support the municipalities in embedding the successes of the programme and reaching even more women. 41% of the total target group live in these 6 municipalities.

One of the instruments used in the 1001 Strengths Programme to help women find paid work is recognition of prior learning (RPL). This enables women to record the skills and experience they have gained in carrying out voluntary work. In this way they have a means of demonstrating their job experience to a potential employer or to an educational institution in order to obtain credits or exemptions. This instrument is being used by a growing number of women.

The positive results of the 1001 Strengths Programme prompted the Ministry of Social Affairs and Employment to start a number of pilot projects early in 2009 to develop and refine the RPL system for ethnic minority women. The aim of the pilots is to develop a transferable method, geared to the local situation, which sheds light on the problems faced by women wishing to move from voluntary work to paid employment. Once the pilots have been completed, the method can be adopted by other municipalities in order to assist even more ethnic minority women to participate in the labour market.

## 22.

The question focuses mainly on the accelerated asylum procedure in the Aliens Act 2000. If an application for asylum is rejected under the accelerated procedure without the applicant having had the opportunity in the first 48 hours to relate traumatic experiences, he or she may file a second application. The applicant is therefore given a second chance. The 48-hour accelerated procedure is expected to be replaced in the second half of 2010 by a general procedure lasting 8 days. More time will be allocated for legal assistance and more emphasis will be put on ensuring the continuity of legal assistance, applying the principle of *ex nunc* rulings by the courts and taking into account all known facts and circumstances of the case.

As regards medical and psychological problems and traumas, all asylum seekers will be offered a medical check so that their condition can be taken into account during the asylum procedure. For instance, if medical or psychological problems are affecting their ability to tell their story in a coherent and consistent manner, this will be taken into account. The accelerated procedure will not be used if an additional hearing is necessary in order to reach the right decision on the asylum application.

The Dutch asylum procedure is gender-sensitive. For example, resisting or protesting about female genital mutilation (FGM) has been a ground for refugee status since 1997. If an applicant is in actual danger of becoming a victim of FGM, this may constitute a violation of article 3 of the European Convention on Human Rights (ECHR) (section 29, subsection 1 (b) Aliens Act 2000). FGM is mentioned in the Aliens Act Implementation Guidelines: asylum may be granted if there is no alternative region in the country of origin where the applicant can live without being exposed to the threat of FGM or if she cannot return to the country of origin without becoming a social outcast.

Asylum status may also be granted on the grounds of honour-related violence or domestic violence in the country of origin if the authorities there are unable or unwilling to provide protection. Victims of trafficking may also apply for asylum. Finally, gays and lesbians who are persecuted because of their sexual preference may receive asylum in the Netherlands. Regular (non-asylum) residence permits may also be available in the Netherlands for victims of domestic violence, honour-related violence and trafficking, and on humanitarian grounds.

## 23.

Just over half of the total population consists of women. Women account for a clear majority of low-income households (almost 55% in 2006). The budget-related limits show a lower proportion of women in the group most at risk of poverty. According to the basic needs variant of this limit, women can no longer really be said to be overrepresented in this group. This is because two categories in which women are strongly represented – single parent families and elderly people living alone – are now less likely to belong to the group at risk of poverty according to the budget-related limit than according to the low-income limit (Statistics Netherlands, income statistics, 2008 poverty bulletin). Unlike the low-income limit, the budget-related limit is not based on the minimum subsistence level for policy purposes (i.e. social assistance benefit or state pension).

Many people on a low income are in receipt of benefits. They are given as much help as possible in finding work. The proportion of cases in which social assistance benefits were ended in 2004 because the claimant found work was 34%. This number had risen to 46% in 2007.

The government considers it important to provide more incentives for people to work and has therefore taken the following measures to combat the poverty trap:

- strengthening the income-dependent nature of the employed person's tax credit for all working people;
- introducing an income-dependent combination tax credit for those who combine working and looking after children;
- reducing the employees' contribution under the Unemployment Insurance Act to zero, thereby providing a further incentive to work rather than to receive benefits;
- converting the child tax credit into a means-tested child allowance in 2008; this has brought this tax credit within the grasp of many single working parents, sole earners and self-employed people, thereby boosting their annual income by up to about 900 euros.

### *Single parents*

A higher than average proportion of single parents (95% of whom are women) work part time and have to support two or more people from a single income. As a result, they have a higher risk of poverty: according to calculations of the Social and Cultural Planning Office 11% of all single working parents are below the poverty line, compared with 2% of the total workforce.

Single-parent benefit from many generic incomes policies, including the tax credit and supplementary tax credit for single parents. They also benefit from the means-tested child allowance and the income-dependent combination tax credit. Finally, since 1 January 2009, municipalities have been able to grant an annual supplement to working people whose income has been low for a long period and who have no prospect of earning more.

An experiment specifically aimed at promoting employment for single parents started on 1 January 2009. The aim of the experiment is to ascertain to what extent various measures (including training and benefits exemption from earned income limits), possibly in combination with one another, can improve the effectiveness of measures to involve single parents in the labour market. This includes finding employment, ensuring the stability of the job and enabling the person to come off benefits. The experiment is to run from 1 January 2009 to 31 December 2011.

### *The over-65s*

Much poverty also occurs among the over-65s. Around 217,000 people in this age group are in receipt of an incomplete state pension when they retire as they have not lived long enough in the Netherlands to build up full entitlement. Some of them (approximately 33,000) also have little or no supplementary pension and must therefore resort to applying to municipal social services for supplementary benefits. However, many elderly people do not do so. By transferring the administration of supplementary benefit from the municipalities to the Social Insurance Bank the government wishes to ensure that these elderly people do not miss out on this supplement. The Social Insurance Bank contacts pensioners on its own initiative to inform them that anyone not in receipt of a complete state pension may be entitled to a supplement. These people can then apply directly for the supplement.

The allowances to which people in receipt of a state pension or benefits under the Surviving Dependents Act are entitled have been increased from 1 January 2009 by an amount in excess of the usual indexation rate. The allowance for state pension has been raised by an extra 256 euros a year and that for people receiving benefits under the Surviving Dependence Act by an extra 20 euros a year.

## 24.

Combating discrimination is one of the key planks of government policy. A public information campaign has been mounted to encourage people to report discrimination, and anti-discrimination services are being established in the municipalities (see also question 7).

### *Preventing discrimination in sports schools*

The Equal Treatment Commission is still reporting cases in which women and girls are turned away by fitness centres and sports schools for wearing headscarves. As this is not a valid reason for refusing admission and it is important for everyone in the Netherlands to be able to take part in sports, the Ministry of Health, Welfare and Sport is currently holding talks on the subject with the Royal Netherlands Strength Sports Federation and the trade association for recognised sports and fitness centres (Fit!vak). Together the parties are studying ways of ensuring that women wearing headscarves cannot be turned away by fitness centres and sports schools.

### *Combating discrimination in schools*

Publicly-run schools may not, in principle, prohibit the wearing of religious symbols. See article 23, paragraph 3, of the Constitution. However, all schools may prohibit the wearing of headscarves or jewellery where this would jeopardise safety (for example in PE lessons). Clothing that covers the face may be prohibited not only for reasons of safety and identification but also in the interests of effective learning. However, the wearing of items of dress or jewellery may not be prohibited at publicly-run schools simply because they are religious symbols. Private schools may prohibit this, albeit subject to strict conditions.

Private schools may prohibit the wearing of headscarves and other religious symbols only if this is necessary in order to ensure compliance with the religious or ideological basis on which they are founded. However, a private school may not do this on an arbitrary basis and must pursue a consistent policy. This is about protecting a fundamental right of another person (freedom of education), which may, subject to certain conditions, infringe the freedom of religion (and the principle of equality). This means, among other things, that the infringement must be proportionate to the interests involved (requirement of proportionality). Furthermore, the imposition of conditions by a private school may not result in discrimination based on the mere fact of political opinion, race, sex, nationality, sexual orientation or marital



status. This exception for private schools is contained in the Equal Treatment Act (sections 5 and 7).

#### *Strengthening the labour market position of ethnic minorities*

The government has introduced a wide variety of generic measures to help those whose employment prospects are poor to find a job. The following extra measures have now been taken with the social partners to remove obstacles preventing people from non-Western ethnic minorities from entering and moving around in the labour market.

- Dual integration and language courses can improve the labour market position of people from non-Western ethnic minorities. In addition, continuing the community-based approach and establishing links between different processes (training, integration and language courses) can improve the long-term opportunities of women from non-Western ethnic backgrounds in the labour market, for example through voluntary work or vocational training. Research is under way to determine the extent to which voluntary work aids integration. A sum of €90 million has been made available for extra integration courses for women in the period from 2007 to 2009.
- Promotion of entrepreneurship. A study is being carried out to ascertain what obstacles must be removed in order to encourage women from ethnic minorities to start their own businesses. The provision of microcredits will benefit this group as well. The policy appears to be working as people from non-Western ethnic minorities, including many Muslim girls, are catching up with other groups in the labour market.

#### *Combating discrimination in recruitment and selection*

Article 1, the anti-discrimination association, has carried out the 'Recruitment and selection without worries' project for the Ministry. Training sessions have been organised for officials of the Centre for Work and Income. A conference has also been held for personnel officers. In addition, a handbook entitled 'Equal treatment and recruitment & selection', which deals with race and gender issues, has been produced for personnel officers.

The Social and Cultural Planning Office has started carrying out practical tests to assess the extent of discrimination in recruitment and selection. This involves pairs of applications with the same characteristics (qualifications, age and sex) being sent with similar letters and CVs to potential employers. The only difference is that one applicant has a typically Dutch name and the other a foreign-sounding name. The aim of the test is to ascertain to what extent discrimination occurs in different categories of company. The results are expected by the end of November 2009.

#### *Combating discrimination in the workplace*

The Netherlands has added discrimination to the list of subjects that give rise to psychosocial stress at work. This means that the Health and Safety Inspectorate now also has a role to play. If there is a clear risk of discrimination in a particular company, the Inspectorate may require the employer to pursue a policy designed to combat this. If the employer fails to do so the Inspectorate can impose a fine. The idea is that an approach similar to that for sexual harassment and bullying should be adopted. The existing instrument for measuring pressure of work will also be extended.

#### *The Triumph Award and networks*

Every two years the Triumph Award is presented to a person or organisation that has made an outstanding contribution to the empowerment of black, migrant and refugee women. The award is worth €15,000.

The ministry responsible for housing, communities and integration encourages networking to strengthen the position of immigrant women by providing (financial) support for PaFemme, local participation teams and networks of immigrant and Muslim women.

### **Participation in political and public life**

#### **25.**

The Netherlands does not operate a quota system for political recruitment, nomination of candidates or appointments as this would be at odds with the basic tenets of our democratic and constitutional system, such as the freedom of political parties and the principle of equality. In addition, the Dutch government considers that increasing the participation of women in Dutch politics could be better achieved in other ways that are less likely to clash with these principles.

Increasing the proportion of women in administrative political positions continues to be on the agenda of the Minister of the Interior and Kingdom Relations. Moreover, the Minister is taking active steps to achieve this. She is focusing in particular on the appointment of women to the office of mayor and the initiatives to promote this. This is because the mayor plays a highly visible role in a municipality.

This involves the following measures:

1. Monitoring numbers in order to activate all parties involved in the process of making administrative political appointments to make every possible effort to increase the proportion of women holding these offices. These figures are published every two years, most recently in 2008. The gender ratio among mayors is reported annually to parliament in the budget report.
2. Promoting interest among and the availability of women and bicultural candidates for the office of mayor. This is done by holding information meetings for interested parties at national and provincial level. Special scouts (six mayors and former mayors) have been asked to identify potential members of the target groups. Their job is to scout for suitable talent and to interest them in the job of mayor. They hold talks with the potential candidates, draw their attention to ways of obtaining more information and put them in contact with relevant networks and individuals. The scouts are receiving assistance from a large number of mayors who have offered to provide work placements and supply information to potential candidates about the office of mayor. The scouting is being done in collaboration with the Dutch mayors' association.
3. Implementing the agreements made in 2007 with the Queen's Commissioners for promoting diversity among mayors. They have opportunities for advancing the cause of women and bicultural candidates for specific vacancies. For example, they can offer assessments of potential candidates and appoint women as acting mayors.
4. Putting diversity on the agenda of political parties and emphasising to them the importance of recruiting women candidates. At the end of 2009 the scouts will hold a meeting for the key players in the political parties to promote diversity among mayors.

### **Marriage and family**

#### **26.**

The income requirement for applicants for family formation was raised to 120% of the statutory minimum wage in November 2004. This increase was intended by the then government to improve the starting position of non-EU immigrants in Dutch society. It was

reasoned that if the sponsor were able to bear full financial responsibility for the arrival of the partner, this could help to prevent subsequent claims for social assistance or supplementary assistance. Such assistance may be claimed where the income is less than 120% of the statutory minimum wage. A better starting position in Dutch society might improve the integration of the newcomer. In addition, the introduction of the higher age requirement of 21 was intended to ensure that any decision by both the sponsor in the Netherlands and the foreign partner to reside in the Netherlands would be better considered.

A research report entitled 'International family formation limited?' sheds light on how the introduction of the higher income and age requirements has affected applicants for family formation from non-EU countries. The report was submitted to the House of Representatives on 16 April 2009. In compliance with the Toorenburg/Dijsselbloem motion, the government will send the House of Representatives a report setting out a comprehensive policy on marriage migration and integration. This will be based on a statistical overview of ordinary marriage migration and take account of the results of the evaluations of the effects of the family migration and integration measures (i.e. the study by the Research and Documentation Centre into the effects of the age and income requirements and the evaluation of the Civic Integration Abroad Act).

The quantitative study has shown that the number of successful applications by female sponsors for authorisations for temporary stay has fallen by 48% since the introduction of the measures (compared with 32% in the case of male sponsors). The average fall was 37%. This disparity occurred, above all, in the case of young female native Dutch sponsors and female sponsors from the group of other non-Western countries. The researchers describe this disparity as striking because the educational level of native Dutch women is no lower than that of their male counterparts. A possible explanation for this is that many native Dutch women have part-time jobs. The figures show that older sponsors find it easier to meet the higher income requirement. The figures also show that the gender disparity in the case of sponsors of Moroccan, Turkish and Surinamese origin is relatively small. A possible explanation given by the researchers is that these female sponsors may have higher educational qualifications than male sponsors from the same countries of origin. Even if these women work part time, their labour market position is no worse than that of Turkish or Moroccan men in part-time jobs.

The results of the evaluation of the Civic Integration Abroad Act were sent to the House of Representatives by letter of 2 July 2009 (Parliamentary Papers II, 2008-2009, 32 005 no. 1). In the course of this evaluation, Leiden University examined what effect the Act has had on the number of applications for authorisations for temporary stay and how the implementation of the Act in the first few years should be viewed in the light of international law. The study has produced no evidence that certain groups are disproportionately disadvantaged by the Act. What it does show is that women have a higher success rate on average than men.

As already noted, the results of the evaluation of the Act, together with the results of the evaluation of the raised income and age requirements for family migration, have been taken into account in formulating the government's response to the Christian Democrat and Labour Party motion calling on the government to adopt a comprehensive approach to the policy on marriage migration and integration (Parliamentary Papers II, 2008-2009, 31 700 XVIII no. 19). This government response is currently being formulated as a matter of urgency. The policy letter on this subject will be sent to the House of Representatives after the summer recess.

## **Trafficking and exploitation of prostitution**

### **27.**

The Dutch policy on the admission of victims of trafficking makes provision for two possibilities. First, the victims may obtain a specific residence permit if they cooperate with the authorities in the investigation and prosecution of the offence. Second, they may be eligible for a residence permit on humanitarian grounds. In both situations, victims are entitled to shelter and protection, legal assistance and medical provision.

Victims of human trafficking who cooperate with the authorities in the investigation and prosecution of the suspect are eligible for a residence permit (the B9 procedure). If there is evidence of trafficking, the police allow the victim a maximum of three months for reflection. During this period the victim is granted lawful residence (section 8 (k) of the Aliens Act 2000) and his or her expulsion from the Netherlands is suspended. During the 3-month period the victim may decide whether or not to cooperate in the criminal proceedings. Alternatively, the victim may decide to waive his or her rights to the reflection period and instead either give an immediate undertaking to cooperate or apply for a residence permit on humanitarian grounds. In practice, almost no use is made of the last option.

If the victim decides not to cooperate there is no general right under Dutch immigration policy to a residence permit as a victim; however, humanitarian factors, including victimhood, may be taken into account in deciding on an application. In the case of victims who are unwilling or unable to cooperate, for example because they feel seriously threatened or have physical or mental complaints, a decision on whether these constitute special individual circumstances justifying the issue of a residence permit will be decided on request.

Since 1 January 2009 possible victims who enter the Netherlands through Schiphol Airport may also be offered time for reflection. The Aliens Act Implementation Guidelines have been modified for this purpose. These victims too will be offered protection, help and shelter.

Shelter is being provided for the victims for the time being in the regular women's shelters. A pilot project to accommodate victims of trafficking in a special safe house during the reflection period will be set up. A special plan of treatment and care will also be provided during this period.

### **28.**

In keeping with the human trafficking directive issued by the Board of Procurators General the police have been expressly instructed that if there is even the slightest indication of human trafficking they should offer the potential victim a residence permit for the duration of the proceedings against the perpetrator (the B9 procedure), preceded by a three-month reflection period, and inform the victim about the facilities for protection and shelter. If the victim does not wish to make use of the three month reflection period or refuses to cooperate and also does not apply for residence on humanitarian grounds, he or she will be required to leave the Netherlands and may be detained for the purpose of expulsion.

A situation may occur in which no signs of human trafficking become apparent before the alien is detained in custody and/or the alien has also not reported being a victim. In such a case, the indications of trafficking may be identified by the authorities or reported by the alien only at a later stage, i.e. during the period in custody. If evidence of human trafficking is

discovered during the alien's detention for the purpose of expulsion, the staff of the institution should alert the police. The police must then interview the alien and inform him or her of the possibility of obtaining a reflection period and reporting the offence, or in some other way cooperating in an investigation or prosecution for human trafficking. The reflection period may be granted if both the Public Prosecution Service and the police consider that there is evidence of human trafficking.

If a victim who has been detained for the purpose of expulsion is granted a reflection period, the basis for detention ceases to exist and he or she is released. The victim may also choose to report the offence directly or to cooperate in the investigation and prosecution. In such a case a B9 residence permit is granted and the basis for detention once again ceases to exist. A victim who is granted a reflection period or has reported the offence to the police or otherwise agreed to cooperate is entitled to the same facilities as other victims of human trafficking. This means that the police register the victim with the Human Trafficking Coordination Centre (CoMensha) with a view to placement in a safe house and the provision of counselling. At the same time, the victim is eligible for financial support in order to defray his or her subsistence costs and for medical and legal assistance.

The Aliens Act Implementation Guidelines were amended in February 2008 to include an explicit provision on the action to be taken in respect of victims who are recognised as such only after they have been detained for the purpose of expulsion (under section 59 of the Aliens Act). The staff of the Return and Departure Service have also been expressly instructed to watch for signs of human trafficking in the case of aliens whose return they are arranging and to contact the police in such cases.

Unaccompanied minor aliens are particularly likely to fall prey to forms of exploitation and/or trafficking, often when they are on the verge of adulthood. Tackling human traffickers and human smugglers who bring unaccompanied minors to the Netherlands is a priority for the government. Mention should be made of the safe house pilot project for unaccompanied minors who are or may have been the victim of trafficking. The pilot involves measures to protect at-risk minors from traffickers and smugglers.

Despite the use of protective measures the possibility that these young people may disappear can never be entirely excluded. The safe houses are secure but not sealed off. In the space of about 18 months some 20 young people have unfortunately disappeared from the safe house, most of them from India. As a result of these disappearances, it has been decided that in addition to the existing security measures (24-hour supervision, CCTV cameras and door warning lights) an extra security firm should be hired to carry out surveillance. In the case of all these disappearances both the police and the Royal Military Constabulary have been called in immediately and surveillance of the sites has been stepped up. With the assistance of the Expertise Centre for Human Trafficking and People Smuggling, adequate measures have been taken to investigate these disappearances. For the time being these measures appear to be bearing fruit.

The close cooperation between the safe houses and the law enforcement authorities has contributed to the dismantling of an international criminal organisation involved in smuggling and trafficking Nigerian girls. A criminal investigation has also been instituted into the disappearance of the unaccompanied minors from India.

It is still too early to make any final assessment of the extent to which this safe house pilot project is helping to reduce the number of disappearances. The project will be evaluated by the Research and Documentation Centre from the end of 2009. It is clear in any event that the number of disappearances of Nigerian girls has been greatly reduced: some 40 Nigerian girls disappeared in 2006 and 2007 compared with just one in the period from the start of the pilot project until mid-2009.

### **29.**

The anti-trafficking task force has been established to deal with operational issues at set times. It follows that, with the exception of the National Rapporteur on Human Trafficking, its members consist solely of government bodies. Another consideration is that if NGOs were to be represented on the task force, this could compromise their independence.

The decision establishing the task force does, however, state that the task force will keep in close contact with the relevant organisations in the field. Specific mention is made of the Human Trafficking Coordination Centre (CoMensha) . In practice, this means that the task force keeps in touch with various organisations through its chairperson. It should be added that interministerial consultations on human trafficking at which various NGOs are present are held twice a year. I believe that these measures adequately safeguard the contribution of these organisations.

### **30.**

Under the amended Bill all sex workers, not only the self-employed, will have to register. Registration will shed more light on this part of the sex industry and make it easier to provide information and assistance to sex workers. It will also increase the scope for identifying and combating abuses.

The Ministry of the Interior and Kingdom Relations has commissioned a quick scan of the registration system. One of the findings is that a guarantee of anonymity is essential for the success of a register. This is why the system will have to meet specific requirements designed to safeguard privacy. All sex workers, around 95% of whom are now self-employed, will have to register. The duty to register does not affect whether or not a sex worker can work in a self-employed capacity. If she is afraid of being recognised, she can register in a different municipality. A municipality may not refuse to register an adult sex worker who has a valid work permit. The data in the registration system are not publicly accessible and are not linked to other information systems (such as those of the Tax Administration). The data may be inspected only by officials charged with monitoring compliance. The management of the system will be organised at national level. The Data Protection Authority has indicated that it has no objection from the point of view of data protection to the registration duty proposed above.

When a sex worker registers she will be given detailed information by the municipality. It is proposed that this should include information about the health risks associated with the work, about healthcare institutions and social services (e.g. the addresses and telephone numbers of the municipal health service, the police etc.) and about social security, insurance and taxation. There will also be information designed to empower sex workers and assist those who wish to leave the industry; it will also explain how to deal with pimps. The Bill introduces strict rules governing brothel owners, which will help to increase the safety of brothel workers.

The new legislation will mean that there is no longer a 'grey area'. All sex work, including escort work, will be subject to a degree of regulation. After the legislation enters into force

there will be only two distinct areas: legal, regulated sex work and illegal, unregulated prostitution.

Under the Bill there are also fewer obstacles for self-employed sex workers than for businesses. After registration, self-employed women may set up and work anywhere. Unlike businesses, they do not require a permit from a municipality. Businesses in this sector must always have a permit. Consequently, the Bill does not in any way limit the scope for women to work independently.

## **Health**

### **31.**

The Dutch government recently published a policy plan for dealing with health inequalities related to socioeconomic background (December 2008). As part of its policy on health and disease prevention, the government acknowledges that poor health resulting from lifestyle and environmental factors is detrimental to the material and non-material welfare of Dutch society. Much of this avoidable health deprivation is concentrated among groups that have relatively poor health and a low educational level. They include a high proportion of women and people from ethnic minorities.

The ministry of Health, Welfare and Sport will publish a follow-up to this policy plan in the autumn of 2009. This will be a response to the advisory reports of the Social and Economic Council and the Council for Public Health and Care about the parallel interests in health care.

One of the measures being taken to improve the health of ethnic minority women is the monitoring of their health and the healthcare facilities available to them. The effectiveness of such facilities is being studied. A community/neighbourhood-based approach is being developed by the ministry responsible for housing, communities and integration and the Ministry of Health, Welfare and Sport. This may include measures to improve factors that impact the health of women such as their socioeconomic position and the level of local amenities. The Ministry of Health, Welfare and Sport has also taken steps to reduce infant mortality among ethnic minorities. And there is a cross-government study of the role which active participation in society plays in the health of ethnic minority women (and vice versa).

Once every four years the Netherlands prepares a national report in the context of the UN Women's Convention. The international report to the CEDAW Committee and the national report to the Dutch parliament alternate. In 2003 the government decided that the national reports should be limited to a particular theme. This would make it possible to explore a subject in greater depth. The national report in 2009/2010 will study the health of ethnic minority women in relation to their socioeconomic position, participation in the labour market and so forth. The report will be sent to the House of Representatives in 2010. The study is also expected to yield information about the effectiveness of the health care facilities for ethnic minority women and the extent to which their health problems prevent them from participating in the labour market.

**Annexe 1: Letter to Dutch CEDAW Network (10 December 2008)**



Dutch CEDAW Network  
Attn. Ms L Drogen  
Postbus 114  
3500 AC UTRECHT

Den Haag	Our ref.	Your letter of	Your ref.
10 December 2008	DE 66062	10 July 2008	-
Re		Encl.	

UN Women's  
Convention Monitor

Dear Ms Drogen,

Thank you for sending the UN Women's Convention Monitor, which I received from you in mid-July 2008, and to which I am responding both in my own capacity and on behalf of the Minister and State Secretary for Justice, the Minister of Social Affairs and Employment, and the Minister for Housing, Communities and Integration.

The fifth Dutch report was published on 30 June, and not in August as announced. The Monitor, which makes some criticisms of government policy, was released shortly prior to this. As a number of these criticisms are answered in the government's fifth report, I would refer you to it for detailed responses to most of the issues raised in the Monitor. I would also note that, while the government report focuses on the period up to December 2007, occasionally touching on the situation in 2008, the Monitor tends to focus on recent developments. These are, accordingly, examined in this letter.

The Monitor states that the memorandum on the legal scope of the UN Women's Convention, which had been promised to the House, has not yet materialised. In this connection I can inform you as follows. I discussed the legal position of the Convention with the House of Representatives at the plenary session on international equal rights policy on 10 October 2007. The House asked me to send the information in writing, before the plenary session on the equal opportunities memorandum planned for 7 November 2007. I did this in my letter of 5 November 2007 (see Parliamentary Papers 2007-2008, 30420, no. 65), in which I discussed the provisions of the Convention and concluded that there was no straightforward answer as to whether they have direct effect. For further details I refer you to my letter to the House.

I would like to make the following observations regarding the four areas on which the Monitor reports.

#### 1 Maternity benefit for self-employed women

The government does not share the opinion that the UN Women's Convention *requires* there to be a public maternity benefit scheme for self-employed women. In its judgment of 25 July 2007 (no. 257 427/HAZA 06-170) The Hague district court stated, in line with the government's view, that there was no legal necessity to set up a public scheme for the self-employed. The Court of Appeal has not yet ruled in the appeal against this judgment, lodged

by a number of parties including the Clara Wichmann test-case fund. Accordingly, case law does not support the view that the Dutch government is obliged to adopt a public scheme for the self-employed.

While the government believes, therefore, that international law does not require a public maternity benefit scheme for self-employed women, it also believes that such a scheme is desirable. The main consideration in reaching this conclusion was the desire to protect the health of mother and child. The government's intention in making maternity benefit available was to enable self-employed women to stop working in the period immediately before and after childbirth. In other words, protecting the health of mother and child constituted legal grounds in its own right.

When the Maternity Benefit (Self-Employed Women) Bill was debated in parliament the proposal to make the benefit retroactive was considered at some length. The government observed that paying out benefits retrospectively would not help to achieve its goal; after all, benefits paid out once pregnancy and childbirth have already taken place have no effect on women's ability to stop working immediately before and after childbirth.

## 2 Violence against women

The Monitor confirms the fact that the Dutch government takes the problem of domestic violence very seriously. A new action plan on domestic violence has recently been drawn up, covering the period up to 2011. On 1 September 2008 this plan, entitled 'The Next Phase', was submitted to the House of Representatives. The plan builds on the results achieved by the 'Private Violence – a Public Matter' programme. Although a great deal has already been achieved, it has become increasingly evident that domestic violence is still one of the most widespread forms of violence in our society. Six ministries, the Public Prosecution Service, the police, the Probation Service and the Association of Netherlands Municipalities are working together on this new national approach, under the coordination of the Ministry of Justice.

The new plan has a total of 23 action points falling under three main themes: prevention, identification and intervention; research; and instruments and cooperation. Research is currently being conducted at national level into the scale of domestic violence, and profiles of perpetrators and their victims and the kind of assistance they require are being compiled. A national model approach to domestic violence is also being developed.

Moreover, we are continuously fine-tuning our response to domestic violence under criminal law. The target is to increase the percentage of official complaints made to 45% of all incidents registered by the police, and the percentage of arrests to 70% by 2011 (compared to 38% and 64% respectively in 2006). This will give more scope for prosecuting perpetrators of domestic violence. In line with this, the aim is to have a comprehensive range of probation services available by the end of 2008 for those involved in domestic violence prosecutions. The objective is to reduce the number of repeat offenders to 25% by 2011 (compared to more than 30% in 2006).

On 1 August 2008 the Public Prosecution Service's new domestic violence directive, which determines the rules for investigating and prosecuting perpetrators, came into force. Moreover, enabling conditions have been formulated on cooperation at local level between police, the Public Prosecution Service and the probation service.

In the coming period we will also be focusing on domestic exclusion orders. The Temporary Domestic Exclusion Order Bill was debated in the Senate on 30 September 2008, and it is expected that the Act will come into force in early 2009.

The Monitor repeatedly states that the study carried out by the Ministry of Justice's Research and Documentation Centre (WODC) into the nature and scale of domestic violence does not meet the criteria for responsible gender-specific research drawn up by the European Union. I do not agree. The WODC survey of victims of domestic violence was developed in line with the International Violence Against Women Survey (IVAWS). The questionnaire has been expanded, to reflect the fact that it also covers male victims of domestic abuse. The information generated by the survey will be processed to differentiate according to gender, age, socioeconomic status and ethnocultural background.

The Monitor also calls for more focus on the gender-specific character of domestic violence and the use of gender mainstreaming instruments. I can report that the Minister of Justice has commissioned a gender analysis as part of the action plan. The gender analysis will:

1. examine the approach to gender aspects, looking at whether the approach is sufficiently gender specific and at whether there is any explicit or implicit gender stereotyping, and
2. list points of departure for a gender-specific approach, making suggestions as to the form this might take.

### 3 The sex industry and trafficking in women

The order establishing the Human Trafficking Task Force specifies that close contact must be maintained with other relevant parties in the field, e.g. relevant NGOs, in order to guarantee their involvement. The Task Force has now inventoried the major issues (which include accommodation for victims, better supervision of the sex work sector and greater focus on the position of victims) and drawn up action plans for tackling them.

The Monitor states that the position of sex workers has improved only slightly, if at all, since the ban on brothels was lifted. It also states that their interests were given scant consideration when the licensing system was introduced.

#### *Employment market and employment permit policy*

In this connection I would refer you to the letter of 6 November 2007 entitled 'Safety begins with prevention' and the letter of 16 May 2008 on the sex industry, in which it was announced that current policy on the employment market and on employment permits for foreign sex workers from countries that are not entitled to free movement of workers will continue. The search for an alternative to the current admission system has not led to a suitable solution. Moreover, given the close ties between prostitution and human trafficking, there is an ongoing real risk of exploitation. This means that the current situation will continue: no employment permits will be issued for sex workers, but the Foreign Nationals (Employment) Act (*Wet Arbeid Vreemdelingen*) does offer a basis for supervision and enforcement.

#### *Evaluation and new measures*

There has been an in-depth evaluation of the lifting of the ban on brothels, thus implementing recommendation 22 of the CEDAW Committee. The evaluation focused on the effects of the amendment, including on the protection of sex workers' position (including their social position and health status). The fifth report did not examine in detail the newest policy measures, such as those announced in the letter from the Ministers of the Interior & Kingdom Relations, Justice and Social Affairs & Employment in their letter to the House of

Representatives of 16 May 2008, given that the announcement fell outside the period covered. As you are probably aware, the object of these measures is to improve sex workers' social position. Plans to step up work on exit programmes for sex workers were also announced.

The most recent report by the Ministry of Justice and the Immigration and Naturalisation Service, which includes an evaluation of gender-related aliens policy in the Netherlands, has been translated into English and sent to the CEDAW Committee.

#### *Role of the Labour Inspectorate (AI)*

The Monitor states that checks on licensed businesses are still, for the most part, conducted by the police, even though they are within the AI's remit. It believes that this has a detrimental effect on the police's capacity for checking the unlicensed, illegal sector for forced prostitution and exploitation of minors.

Both the municipality and the police play an important role in supervising and enforcing rules in the sex industry. Municipalities control policy and issue permits. Many municipalities have appointed designated police officers who check that licensed sex businesses are not breaking the licensing rules of 'no minors' and 'no illegal aliens'. The police are also responsible for investigating crimes committed within the sex industry.

The AI checks that the Foreign Nationals (Employment) Act, the Minimum Wage and Minimum Holiday Allowance Act (*Wet minimumloon en minimumvakantiebijslag*), Working Conditions Act (*Arbeidsomstandighedenwet*) and the Working Hours Act (*Arbeidstijdenwet*) are being observed. If they are contravened, the AI will impose a fine on the employer or, where applicable, submit an official report to the Public Prosecution Service.

As announced in the letter of 16 May on the sex industry, the AI makes capacity available for integrated law enforcement operations within the sex work sector at the municipality's request. Examples include deploying intervention teams and measures to tackle the problem of unregulated prostitution.

Such interventions must be initiated by the municipality and actively involve a number of relevant agencies (the municipality itself as well as the police, tax administration, etc.)

#### 4 Family reunification

The Monitor states that the drop in the number of applications for family reunification is due to the conditions migrants need to meet, particularly the income requirement and the Civic Integration (Preparation Abroad) Act. It also states that these measures particularly affect women. On 1 November 2004 two new measures relating to forming a family were adopted, namely an increase in the income requirement from 100% to 120% of the statutory minimum wage and a rise in the age limit from 18 to 21. These measures affect only those who wish to come to the Netherlands to form a family, not to those applying for family reunification.

On 15 March 2006 the Civic Integration (Preparation Abroad) Act came into force. The drop in the number of applications for family reunification/family formation can be attributed only in part to the new measures, as it was first noted before the measures were introduced. The exact impact of the Civic Integration (Preparation Abroad) Act will be examined when the Act is evaluated. The impact the other two measures have had on forming a family is currently being examined as part of a Ministry of Justice evaluation. Accordingly, no

conclusions can be drawn at present on how these measures affect those seeking family reunification, in general, and women, in particular.

The costs of civic integration abroad are not €5,000, as stated in the Monitor but, rather, €350 (for sitting the exam abroad) plus €67 for the optional preparation materials. The government believes that the costs of civic integration abroad are not disproportionately high.

As regards civic integration in the Netherlands, the government recognises that the implementation of the Civic Integration Act has created certain problems, and that the number of people following the integration process has stagnated. The government is working with municipalities to accelerate integration of new and established migrants, in the interests of preparing more candidates for participation in Dutch society (Parliamentary Papers II, 2008-2009, 31 143, no. 25). We have also recently decided to postpone linking a permanent residence permit to passing the civic integration examination to 1 January 2010. For more information please see the letter from the Minister for Housing, Communities and Integration to the House of Representatives of 29 August 2008.

I would also observe in this connection that the application for a residence permit for continued residence will not be denied if the applicant does not pass the examination, if he or she is lawfully resident on the grounds of a dependent residence permit and if the relationship on which that is based has ended due to domestic violence (article 3.80a, Aliens Decree 2000).

I do not agree with the Monitor's conclusion that gender aspects have not been taken into account when modernising policy on family reunification. The guiding principle in establishing the new system for regular admission was that it should not make family migration policy any stricter or tighten up the conditions governing other, specific types of residence, e.g. that of victims of human trafficking, domestic violence or honour crimes. Changes in policy to improve the position of these vulnerable groups will continue to be made after the introduction of the new regular system. This means that the new system will continue to take gender aspects into consideration.

### Conclusion

It is clear from the Monitor that the Dutch CEDAW Network believes it is very important for the government to explicitly relate the measures it has taken to the UN Women's Convention. I agree with you that the Convention plays an important role in formulating policy and legislation – in the Netherlands and globally – that will eliminate discrimination against women and ensure that they develop their potential. This should be clear from the fact that 'Improving Women's Prospects: Equal Opportunities Policy 2008-2011' explicitly states that the guiding principles for gender equality and equal treatment of women and men are legally embedded in international conventions and legislation at national and European level, including the UN Women's Convention.

In adopting new measures the government has taken the CEDAW Committee's recommendations into account, even if this has not been explicitly acknowledged.

I trust that this addresses your concerns. A copy of this letter will be forwarded to Parliament.

Yours sincerely,

Ronald H. A. Plasterk  
Minister of Education, Culture and Science

**Annexe 2: Letter to the House of Representatives of the States General (10 December 2008)**

The President of the House of Representatives  
of the States General  
Postbus 20018  
2500 EA DEN HAAG

Den Haag	Our ref.	Your letter of	Your ref.
10 December 2008	DE 85488	21 November 2008	2008Z07436/2008D17340
Re		Encl.	
Fifth report on the UN Women's Convention		1	

Dear Madam President,

You recently asked me to submit the promised memorandum on the legal scope of the UN Convention on the Elimination of All Forms of Discrimination against Women in good time, with a view to the plenary session on equal rights policy planned for 17 December 2008.

We discussed the legal position of the Convention at the plenary session with the House on 10 October 2007. You asked me then to send you the information in writing, before the plenary session on the equal opportunities memorandum planned for 7 November 2007. I did this in my letter of 5 November 2007 (see Parliamentary Papers 2007-2008, 30420, no. 65), in which I discussed the provisions of the Convention and concluded that the question as to whether they have direct effect cannot be answered in general terms. My views as expressed in this letter, a copy of which is enclosed, are unchanged.

During the plenary session on 12 November 2007 you then asked me for a written response to the Dutch CEDAW Network's letter of 7 November 2007, regarding the legal scope of the Convention. As I explained in my letter responding to the questions put to me during the plenary session on 12 November, I looked at all the recommendations of the CEDAW Committee and the Dutch CEDAW Network when compiling the fifth Dutch progress report on the implementation of the UN Women's Convention in the Netherlands. This includes the points made by the Network in their letter of 7 November 2007.

In their letter of 17 November 2008 to the House, of which I received a copy, the Dutch CEDAW Network said that I had not considered all their points, namely:

- the position taken by the State Advocate, e.g. in the Calvinist Party (SGP) case and in the case regarding maternity benefit for self-employed women;
- the position the State adopted on three communications submitted to the CEDAW Committee;
- the need for a summary of the debates on this matter in legal texts and in published annotations of court judgments.



In response to the above:

- I discussed the SGP case and the State Advocate's opinion in some detail in the fifth report (see pp. 63 and following). The same report also mentions that maternity benefits for self-employed women have been reinstated;
- the three communications submitted to the CEDAW Committee have now been declared inadmissible;
- it is not incumbent on me to summarise debates in legal texts and/or annotations of court judgments. I made my position on this clear in my letter of 5 November 2007.

In its letter of 17 November 2008 the Dutch CEDAW Network also asked for the decision not to compile interim national reports, but to continue with the series of in-depth studies, to be reversed.

In 2003 the government decided to overhaul the interim national reports and to limit them to only one theme at a time. I refer you to the letter to the House of Representatives accompanying the government's response to my predecessor's second national report (22 December 2003). Focusing on one theme allows the report to adopt a more in-depth approach. The series of in-depth studies will continue in this form. These national reports, and other documents submitted to the House, will over the years provide a complete picture of the implementation of the UN Women's Convention. The most recent national report was on invisible discrimination in education. You received this report on 17 July 2007 (see Parliamentary Papers 2007-2008, 30420, no. 116), and on 21 March 2008 my response regarding the content of the report (Parliamentary Papers 2007-2008, 30420, no. 116). I would like to adhere to this formula.

The government is very interested to know what NGOs think of the implementation of the UN Women's Convention. To ensure that shadow reports continue to be produced, I have asked the Dutch CEDAW Network to compile one for the CEDAW Committee on the fifth government report.

I value good communication with your House on the implementation of the UN Women's Convention in the Netherlands. The most appropriate moment for us to exchange ideas on the matter would be once the CEDAW Committee has presented its concluding comments on the government report, given that the Committee will only then determine which Dutch policy areas it believes require improvement. It is difficult to say when this will be, seeing as the CEDAW Committee has not yet scheduled discussions on the fifth government report.

I trust this addresses your concerns.

Yours sincerely,

Ronald H.A. Plasterk  
Minister of Education, Culture and Science

**Annexe 3: (attached letter to the House of Representatives of the States General (5 November 2007))**

**The House of Representatives of the States General**  
**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 gender equality 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