

**Netherlands Institute for Human Rights**  
**Written Contribution**

to the Group of Experts on Action against  
Violence against Women and Domestic Violence

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## Introduction

By presenting this report, the Netherlands Institute for Human Rights provides the Group of Experts on Action against Violence against Women and Domestic Violence with information for its consideration of the baseline report of the Netherlands. The Institute constitutes the National Human Rights Institution of the Netherlands and has been accredited with A Status by the Global Alliance of National Human Rights Institutes in May 2014. The Institute protects, monitors, explains and promotes human rights in the Netherlands through research, advice, and awareness raising. Its mandate also covers urging the Government to ratify, implement and observe human rights treaties. One instrument used by the Institute to carry out this mandate is reporting to treaty monitoring bodies, including GREVIO.

In the preparation of its report, the Institute has consulted a variety of experts and professionals in the field. This was very beneficial for the Institute to get a better understanding of practice on issues addressed in the Convention. At the same time, it helped to obtain some insight in the existing awareness of the Convention and to bring the principles and obligations to the attention of these stakeholders, where useful.

The Institute has not addressed all topics covered by the Convention. This does not imply that the Institute believes those topics not addressed are sufficiently observed or that they do not warrant examination by GREVIO.

## **Key findings**

### **Convention of Istanbul not used as a yardstick in formulating and implementing policy**

The Netherlands Institute for Human Rights (hereafter: the Institute) appreciates that preventing and combating domestic violence is a high priority for the Dutch government. It observes, however, that there is still a lot of room for improvement. The entry into force of the Convention of Istanbul could have been used as an opportunity to critically assess whether existing programmes and initiatives on violence against women and domestic violence individually and taken together are in compliance with the Convention. This would have helped to gain a comprehensive overview of the measures taken and the identification of areas in which additional measures are required. In this section, the Institute highlights its main findings of a general nature.

### **Absence of a gender perspective**

The government deliberately adheres to a gender neutral policy on domestic violence. This follows from the firm belief that this will do justice to the fact that each individual can become a victim of domestic violence. The Institute reiterates its concern about this position. It goes without saying that the Institute fully agrees that each individual has the right to be free from violence and to receive adequate support in the case of violence. It also acknowledges that individuals can be in a vulnerable situation for a variety of reasons. Specific attention is indeed necessary to prevent and combat domestic violence against children, elderly persons, persons with disabilities and lesbian, gay, bisexual, transsexual persons and persons with an intersex condition. But it underlines that a gender neutral policy does not sufficiently link the prevalence of domestic violence against women and girls to the unequal position of women in society and the power imbalance between women and men.

To fully understand the position individuals find themselves in, in particular individuals who are victims of violence by a person with whom they have, or have had, a relationship, it is a prerequisite to take into account the societal context. Only then, patterns become visible. Changing the societal context, the modification of stereotypes about the role of women and men in society and a different balance of power are necessary to prevent and combat violence against women and domestic violence. Implementing a gender neutral policy has as a risk that there is insufficient attention for the structural causes of violence against women and girls.

### **Monitoring and coordinating role of the central government should be strengthened**

Municipalities have many responsibilities in preventing and combating domestic violence. They have much room for developing and implementing policies. In so doing, they can - and must - take into account local specificities. As state organs, they are under an obligation to do so in compliance with the Convention. It is a cause of concern that there is inadequate monitoring at the local level to assess whether local policies and practices comply with national and international obligations. The central government should oversee whether monitoring at the local level is adequate and should take measures if this is not the case, and when municipalities do not comply with their substantive obligations. This report identifies, among others, problems in the field of access to shelter and support services for victims of domestic violence.

In addition, this report shows a need to coordinate policies and practice in which various municipalities, or other organs, are involved. This is the case, for example, for guaranteeing access to shelter and to address the problems of women in shelters who have debts.

### **Implementation of the Convention in the Caribbean Netherlands**

Even though Bonaire, St Eustatius and Saba have the status of special municipalities and therefore form an integral part of the Netherlands, the Convention is not implemented in that part of the Kingdom of the Netherlands. This is an unacceptable difference in treatment between various citizens of the Netherlands. Furthermore, in view of the seriousness of the problem of domestic violence, there is an urgent need for full and immediate implementation of the Convention.

### **Guarantee compliance by private parties**

The due diligence standard requires that the government takes all appropriate measures to ensure that the Convention obligations are also implemented by employers and other private parties. While appreciating that the ministry of Social Affairs and Employment is strengthening its actions aimed at preventing and combating ‘inappropriate behaviour’ at the workplace, the Institute finds it difficult to understand why these initiatives do not explicitly refer to binding norms on discrimination and sexual harassment at the workplace. Not only are these binding norms, they also provide clarity on the meaning of ‘inappropriate behaviour’ by defining what is unacceptable behaviour. Further, particularly in light of the discussion on #MeToo, the Institute considers that commissioning inquiries about ‘inappropriate behaviour’ without paying attention to sexual harassment from a gender perspective, is a missed opportunity to gain insight into this particular phenomenon which affects mainly women.

### **Missed opportunities**

All things considered, the Institute observes that the government has taken various commendable steps to prevent and combat violence against women and domestic violence. It notes however, that much more needs to be done to guarantee women’s right to be free from violence. The Institute considers that the Convention of Istanbul, with its concrete obligations on prevention, awareness raising, protection and support, should be used as a yardstick to examine current policies and as a standard for the development of new policies. While the recent government initiatives are valuable, the absence of a gender perspective, the limited coordinated approach and the lack of adequate monitoring of local policies and practices should be remedied. The Institute considers the absence of references to the Convention to be a missed opportunity to raise awareness about this instrument and its obligations among professionals and the general public.

## Chapter I: Introduction

### I.A. General principles of the Convention

Violence against women is a form of discrimination and perpetuates inequality between men and women. It is a violation of human rights of women. The Convention underlines the clear link between human rights, equality between women and men and the prevalence of domestic violence and violence against women. As the Convention's preamble confirms, the realisation of equality between women and men is a key element in the prevention of violence against women. The Convention therefore obliges governments to include a gender perspective in the implementation of the Convention and to promote and effectively implement policies of equality between women and men.

The Dutch government does not imbed such an explicit gender perspective in its policies to prevent and combat violence against women. At least not in the way the Convention requires: aimed at breaking differences in power between men and women.<sup>1</sup> The Dutch government's attitude towards this gender perspective is rather ambiguous. In its report on the implementation of the Convention of Istanbul and in the Programme 'Violence does not belong at home', aimed at combating domestic violence and violence against children, the term 'gender-neutral policy' is used.<sup>2</sup> In the view of the Dutch government, this term encompasses different groups who can be victim of domestic and sexual violence; not only women and girls, but also men and boys. The government acknowledges that gender plays an important role in the origin and continued existence of violence, but only in addition to other factors such as age, education, ethnicity and sexual orientation.<sup>3</sup> The government seems to recognise the impact of inequality between men and women, but only in so far as it concerns economic means and gender stereotyping. The Institute notes that a gender sensitive approach does not imply that there is no attention for boys and men.

In fact, the programme demonstrates little attention to the different factors. There is no focus on the intersection between these factors and gender. Women (as a group) are rarely mentioned and there is little attention for differences among women. Some examples may illustrate the consequences of this choice. The programme pays much attention to violence against children, without going into the question whether different forms of violence affect girls and boys. The programme pays attention to violence against elderly persons, without, however, focussing on differences between women and men, even though violence against elderly women occurs much more frequently than violence against elderly men. There is a reference to LGBTI's, but they do not fall within the scope of the programme.

There have been efforts to improve the 'gender awareness' of (local) stakeholders, such as municipalities, Safe at Home organisations, the police and the Public Prosecution Service.

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<sup>1</sup> *Advies inzake het conceptvoorstel van rijkswet tot goedkeuring en het concept voorstel van wet tot uitvoering van het Verdrag van de Raad van Europa inzake het voorkomen en bestrijden van geweld tegen vrouwen en huiselijk geweld*, [Advisory report on the Act of ratification of the Convention], Utrecht: Netherlands Institute for Human Rights, 2016; Netherlands Institute for Human Rights, *Written contribution to the Pre-Sessional Working Group of the 65<sup>th</sup> session of the UN Committee on the Elimination of Discrimination against Women (CEDAW) on behalf on the consideration of the sixth periodic report of the Netherlands*.

<sup>2</sup> *Geweld hoort nergens thuis. Aanpak huiselijk geweld en kindermishandeling*, [Violence does not belong at home, Dealing with domestic violence and violence against children], The Hague: Ministry of Justice and Security, Ministry of Health, Welfare and Sport, Association of Netherlands Municipalities, 2018.

<sup>3</sup> *Report by the Dutch government on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)*, September 2018, p. 7.

In 2013 a ‘genderscan’ was performed, which resulted in a toolkit (2016).<sup>4</sup> However, there is no monitoring of the use and impact of these and other instruments.

Despite the continuous high number of reported cases of domestic violence,<sup>5</sup> the Dutch government does not encourage the development of an intersectional and therefore more effective approach to combat domestic violence. To achieve more positive results, it is necessary to take into account different factors and mechanisms between and within groups.<sup>6</sup>

Suggestion for questions:

Please explain how the ‘gender neutral’ policies provide an adequate basis for policies to combat domestic violence and violence against women. In particular, how does the government guarantee that its policies address the causes of genderbased violence?

What steps will the government take to guarantee that policies aimed at preventing and combating domestic violence and violence against women take into account differences among women?

How will the government monitor the implementation of its policies in order to establish gendersensitivity, intersectionality and effect?

## **I.B. Scope of application of the Convention: implementation in the Caribbean Netherlands**

The scope and severity of domestic violence against women and girls in the Caribbean Netherlands are both significant. Poverty is rampant among the inhabitants of the islands. Women often work various jobs to generate sufficient income for their family. They often depend on the income of their partner and/or maintenance money paid by their ex-partner. This financial dependency prevents them from escaping the situation of violence. Further, facilities to prevent violence and to protect and support victims are not available. Although solid initial steps have been taken to tackle violence against women in the Caribbean Netherlands, more is necessary to comply with the requirements of the Convention.

When the government ratified the Convention it excluded its application in the Caribbean Netherlands for the time being. This limitation was motivated by the fact that the Caribbean part of the Netherlands did not comply with the obligations resulting from the Convention. Furthermore, the government noted that legislation was necessary for the application of the Convention in this part of the Netherlands. The Caribbean islands Bonaire, St Eustatius and Saba are special municipalities of the Netherlands and therefore constitute an integral part of the Kingdom. The Institute has on various occasions urged

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<sup>4</sup> K.B.M. de Vaan, M.M. de Boer & M.C. Vanoni, *Genderscan aanpak huiselijk geweld*, Amsterdam: Regioplan, 2013. The follow-up of this project resulted in the Toolkit *Voorbij vooroordelen en stereotypes*, [Beyond prejudices and stereotypes] consisting of four publications, available from [www.movisie.nl](http://www.movisie.nl).

<sup>5</sup> *Geweld hoort nergens thuis*, *supra*, note 2, p. 7.

<sup>6</sup> This lack of intersectionality can even result in biased policies. For example: there is much attention for forms of violence that mainly occur in migrant communities, such as honour related violence and forced marriage. In these policies, there is attention for equality of women and men and the need to empower women and promote their right to self-determination. However, experts have warned that this entails a risk that migrant women are portrayed as powerless victims only and migrant men as brutal wife beaters. J. Janssen, ‘Stigmatisering van moslimmannen’, *Tijdschrift voor de Politie*, jaargang 78 (2016), nr. 6.

the government to implement the Convention also in the Caribbean part of the Netherlands. The application of human rights treaties in the Caribbean Netherlands was recently examined by the Dutch Advisory Council on International Affairs, which concluded that:

‘As a matter of principle, human rights treaties should be applicable to the entire territory of the Kingdom of Netherlands owing to the universality of human rights and the need for consistency in internal and international policy’.<sup>7</sup>

It formulated as a recommendation that:

‘As the BES islands [*i.e.* Bonaire, St Eustatius and Saba] form part of the Dutch constitutional order and a divergent system of human rights cannot be justified by a “fundamental distinction” within the meaning of article 132a of the Constitution, any such differences between the Caribbean and European parts of the Netherlands must be ended.’<sup>8</sup>

The Institute therefore reiterates that steps should be taken to implement the Convention of Istanbul also in the Caribbean part of the Netherlands.

Suggestion for question:

Which obstacles hinder the applicability of the Convention? Which steps are taken to overcome these and within which timeframe?

Which measures does the government take to address violence against women in the Caribbean part of the Netherlands?

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<sup>7</sup> Advisory Council on International Affairs, *Fundamental rights in the Kingdom of The Netherlands: equivalent protection in all parts of the Kingdom. Theory and practice of territorial limitations on the application of human rights treaties upon ratification*, Report No. 107, The Hague: AIV, 2018, p. 34.

<sup>8</sup> Advisory Council on International Affairs, *supra* note 7, p. 34.

## Chapter II: Integrated policies and data collection (articles 7-11)

### II.A. Strategies, action plans and policies

There is no comprehensive action plan to address all forms of violence against women in the Netherlands. Various forms of violence in the private and public sphere are addressed in various policy documents. A relevant recent policy document is the programme ‘Violence does not belong at home’.<sup>9</sup> This covers domestic violence and violence against children.

The Institute appreciates the strategy of cooperation between various ministries that are involved in combating domestic violence and violence against children.<sup>10</sup> It is also positive that the approach to combat domestic violence and violence against children is enshrined in legislation,<sup>11</sup> that the budget has increased in the past years<sup>12</sup> and that the programme Violence does not belong at home<sup>13</sup> has set three main priorities.<sup>14</sup> However, the programme does not identify clear goals or benchmarks that can be monitored.

The main strategy of the programme is to build a national network of regional approaches, in which professionals (police, public prosecution service and social workers, united in Safe at Home centres) and NGOs cooperate. These safety regions can develop their own approach, in line with their specific situation. The Institute is positive about the anchoring of this strategy in an inter-administrative document, which is a continuation of the Regional Approach to Safe Home for the four major cities in 2014. However, this does not solve the problem of limited coherence in the programme and the lack of control of using existing knowledge, especially on gender.

Various guides, factsheets and quality documents are available for municipalities through the Association of Netherlands Municipalities (VNG) and expert institutes (Regioplan, Movisie and Atria).<sup>15</sup> These documents explicitly pay attention to gender. In addition, the VNG has developed a separate guide on the implementation of the Convention. It is not clear though whether and how these guides are used by municipalities.

Suggestion for question:

How do the regional and local structures mentioned in the programme relate to the national coordination by the ministry of Health, Welfare and Sport, especially with respect to operational goals and the use, impact and further development of gender sensitive knowledge?

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<sup>9</sup> Geweld hoort nergens thuis, *supra* note 2, p. 43-44.

<sup>10</sup> These are the ministry of Health, Welfare and Sport, the ministry of Justice and Security, the ministry of Education, Culture and Science and the ministry of Social Affairs and Employment.

<sup>11</sup> The Social Support Act (2015), The Report Code Act (2013, amended in 2017) and the European Directive on minimum standards for the rights, support and protection of victims of criminal offences (2017).

<sup>12</sup> Safe at Home centres: budget increases from €11,9 million in 2018 to €38,8 million in 2021; for the programme, an average of €17 million per year is made available.

<sup>13</sup> Geweld hoort nergens thuis, *supra* note 2, p. 43-44.

<sup>14</sup> Improving the knowledge on recognising the signs of domestic violence and child abuse, stopping this violence and solving the problematic situation and attention for specific topics such as sexual violence, victims of loverboys, honour-related violence and violence against elderly people.

<sup>15</sup> De Vaan *et al*, *Genderscan*, *supra* note 4, Toolkit, *supra* note 4.

## II.D. Monitoring bodies

No separate bodies have been established to monitor and evaluate policies and measures to prevent and combat all forms of violence covered by the Convention. The recently adopted programme ‘Violence does not belong at home’ identifies which actors are responsible for managing, executing and monitoring the implementation of this programme. Much is left to local and regional authorities and other parties. Given the absence of references to the Convention in this programme, it should not be assumed that they will perform their role in conformity with the obligations of the Convention.

Municipalities play a crucial role in preventing and combating domestic violence. This role is laid down in, among others, the Social Support Act. In the implementation of the Act, municipalities have a wide margin of discretion. Municipalities are responsible for monitoring the implementation of this Act, which is a complex and wide responsibility. Reports by the Health and Youth Care Inspectorate show that the fulfilment of this task is still work in progress for many municipalities and requires further investments.<sup>16</sup> In this respect, mention must be made of the problems that exist in challenging decisions taken by municipalities. The new responsibilities of municipalities have as a consequence that their working methods have changed. This requires additional guarantees in terms of access to remedies. Steps have been taken to examine existing laws and procedures, in order to determine how access to justice can be guaranteed.

The question is whether all municipalities are aware of their responsibilities under the Convention and whether they have the necessary expertise to deal with the various aspects of the Convention that fall within the scope of their mandate. The Association of Netherlands Municipalities has published a factsheet on the Convention.<sup>17</sup> This is an interesting start, but much more awareness raising and training is needed to guarantee that municipalities can perform their responsibilities under the Convention.

The ultimate responsibility for the implementation of the Convention rests with the government. It is not clear how the government will monitor the implementation of the Convention at the local level and if and how it will intervene when necessary.

Suggestion for question:

What measures will the government take to guarantee that all municipalities and their local partners have the necessary expertise to implement the Convention and that access to justice is guaranteed?

## II.E. Data collection

Statistics Netherlands (CBS) collects data on the extent and nature of domestic violence and violence against children.<sup>18</sup> However, these data are not disaggregated by, for example, background or disability. It is positive that the government focuses on improving

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<sup>16</sup> Inspectie voor Gezondheidszorg en Jeugd, *Wmo toezicht 2017, Rapport aan de minister over de uitvoering van het Wmo toezicht door de gemeenten in 2017* [Health and Youth Care Inspectorate, Monitoring Social support act 2017], Utrecht: IGJ, 2018, p. 2.

<sup>17</sup> VNG, *Het Verdrag van Istanbul*, The Hague: VNG, 2016.

<sup>18</sup> CBS, *Veiligheidsmonitor 2017* [Safety monitor], The Hague: CBS, 2018; SCP & CBS, *Emancipatiemonitor 2016*, The Hague: SCP & SCP, 2016.

the reliability and validity of the figures; disaggregation of data should be part of this project.

The research centre of the ministry of Justice and Safety, WODC, also conducts research in this area. In 2018, a research on the financial expenses of domestic violence will be conducted. This is similar to an earlier Canadian research. The Institute is looking forward to the results of this research.

As regards domestic violence, the government report presents data collected by the public prosecutor and the judiciary. These data do not, however, comply with the requirements of the Convention. For example, they do not include details about the number of women and men who are victims of domestic violence. Neither do they provide information about the relationship between the victim and the offender. Further, there is no information about the number of incidents that are reported and do not lead to prosecution.

Suggestion for question:

What steps does the government take to collect disaggregated data to further improve the research on domestic violence and other forms of violence against women?

## Chapter III: Prevention

### III.A.-C. Awareness raising and training

The Institute notices that few actions in the programme Violence does not belong at home are explicitly aimed at prevention. The programme focusses on situations in which domestic violence occurs, or where there is a large risk.<sup>19</sup> Attention for structural prevention of (domestic) violence against women is not part of this programme. The private sector and the media are also hardly involved in the governmental projects for prevention (national, regional or local). Positive exceptions are a training programme for judges and the campaign We Can Young / I am mine, which was aimed at sexual resilience of youngsters, both girls and boys.<sup>20</sup>

Most actions to combat gender stereotyping are supported by the ministry of Education, Culture and Science (emancipation policies) and not by the other ministries involved in the programme (the ministries of Health, Welfare and Sport, Justice and Safety, Social Affairs and Employment). Therefore, these actions are in the periphery of the programme.

Suggestion for questions:

Does the government intend to give prevention a higher priority and a more structural place in the chain approach to domestic violence against women, both nationally and regionally and locally?

How will the government make sure that the existing preventive measures are evidence based and have a structural place in policies?

### III.I Encouraging the establishment of protocols and guidelines

#### *Sexual harassment*

Employers are encouraged to appoint a confidential advisor on inappropriate behaviour, which includes sexual harassment. The appointment of such an officer is not a legal obligation, but the Labour Inspectorate considers the appointment an important part of employers' policy to prevent and combat, *inter alia*, sexual harassment.<sup>21</sup> The advisor may be an internal or external officer. Employees who have been subjected to sexual harassment can turn to this advisor. The function of such an officer is to provide support, information and advice to the employee. Recent research on the role and position of confidential advisors shows that there are many differences between advisors. Many of them have not received any specific training: 73% of internal confidential advisors and 38% of external confidential advisors have not received a training.<sup>22</sup> The research concludes that confidential advisors consider that the scope of their mandate is not always clear.<sup>23</sup> It also found that there could be obstacles in accessing the advisors, or that advisors could feel pressure from within the organisation to disclose confidential information.<sup>24</sup>

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<sup>19</sup> Geweld hoort nergens thuis, *supra* note 2, p. 10.

<sup>20</sup> Martijn Bool, Nada de Groot & Hanneke Mateman, WE CAN Young campagne resultaatmeting. Eindrapportage, [We can young campaign, measuring results], Utrecht: Movisie, 2015.

<sup>21</sup> The ministry of Social Affairs and Employment is examining the desirability of a code of conduct on sexual harassment. A report will be available at the end of 2018.

<sup>22</sup> M. Sax & M. Engelen, *Rapport vertrouwenspersonen in arbeidsorganisaties [Report on confidential advisors in the workplace]*, Leiden: De beleidsonderzoekers, 2018, p. 24.

<sup>23</sup> Rapport vertrouwenspersonen in arbeidsorganisaties, *supra* note 22, p. 38.

<sup>24</sup> Rapport vertrouwenspersonen in arbeidsorganisaties, *supra* note 22, p. 37.

Possibilities for confidential advisors to prevent inappropriate behaviour are limited. They do not have the tools to make an impact on the culture within the organisation. Changes must be initiated by the leadership of the organisation.<sup>25</sup> Unfortunately, it was not examined whether the confidential advisors have had any training specifically on dealing with reports of sexual harassment, or of the relevant gender dimensions of this phenomenon.

In a policy response to parliament, the state secretary for Social Affairs and Employment acknowledges the points of concern found in the report of the Labour Inspectorate. She notes that the Labour Inspectorate in its monitoring task examines the competence, independence and accessibility of confidential advisors. She further holds the view that further awareness raising and professionalization will lead to additional efforts by employers and therefore to a significant improvement, so more employees will have access to a confidential advisor who is capable to address and prevent inappropriate behaviour.<sup>26</sup>

The Institute considers it crucial that all measures taken to improve the role and enhance the impact of confidential advisors should take into account the obligations laid down in the Convention of Istanbul. Confidential advisors should be trained to deal with cases of sexual harassment and be able to deal with all matters regarding inappropriate behaviour in a gender sensitive manner.

Suggestions for questions:

Which measures will the government take to guarantee that employers provide for a working environment free from sexual harassment and where incidents of sexual harassment are properly addressed?

Which measures will the government take to guarantee that victims of sexual harassment have a low threshold access to an official, such as a confidential advisor, who is able to deal with cases of sexual harassment and to perform her or his task in a gender sensitive manner?

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<sup>25</sup> Rapport vertrouwenspersonen in arbeidsorganisaties, *supra* note 22, p. 39.

<sup>26</sup> Tweede Kamer, vergaderjaar 2017-2018, 34 843, nr. 31, *Seksuele intimidatie en geweld, Brief van de staatssecretaris van Sociale Zaken en Werkgelegenheid* [Sexual harassment and violence], p. 5.

## Chapter IV: Protection and support

As from 1 January 2015, the responsibility for preventing domestic violence and providing protection and support to victims has been vested in the municipalities. The municipalities are divided into 35 regions with a central municipality and various regional municipalities. Each region has its own policy to combat domestic violence. This structure allows for individualised approaches, which is a positive development. However, in practice, issues do arise concerning specialist care, support services, shelter and monitoring of support services.

### IV.A. Information on support services

Many women victims of violence do not receive all the information necessary on support services and legal measures available to them. Many of them do not know where to go for support and the necessary information is not always available to them in a language they understand. The government reports that information is available on websites and in brochures of for instance the police, shelters and Safe at Home support services. However, not all of this information is available in a language victims understand. Also, it requires that victims know how to find this information online or that they find support services themselves. Information should take into account cultural differences. Many victims do not easily talk about their feelings. Further, victims may find it difficult to discuss sexual violence.<sup>27</sup>

Since 1 January 2015 the previously separate support services for victims of domestic violence and child abuse have been merged into Safe at Home support services. It is unclear whether victims are sufficiently familiar with the relatively new Safe at Home centres. On the other hand, it remains to be seen whether the support services have the capacity to deal with additional requests for support, since waiting lists exist.

The Sexual Assault Centre provides multidisciplinary care for acute victims of sexual violence at 16 locations across the Netherlands. The centre assisted 2624 victims in 2017 which is only a small portion of the estimated 100,000 annual new victims of sexual violence.<sup>28</sup> The Centre estimates that less than 1% of the total amount of acute victims go to the centre for support within a week after the event because they do not know about the existence of the centre, but also due to factors such as shame, guilt and fear of the consequences.

Suggestion for question:

Which measures will the government take to ensure that women victims of violence receive culturally sensitive information on support services and legal measures available to them and in a language they understand?

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<sup>27</sup> Fonds Slachtofferhulp, *Victims in Modern Society*, 2018, <https://fondsslachtofferhulp.nl/>

<sup>28</sup> Centrum Seksueel Geweld, *Jaarverslag landelijk netwerk Centrum Seksueel Geweld 2017* [Annual report national network sexual assault centres], Utrecht: CSG.

## IV.B. Support services

### *Monitoring of support services*

The quality and capacity of the support and protection services offered to victims of domestic violence are not sufficiently monitored by municipalities. The Health and Youth Care Inspectorate concludes in its report that a waiting period applies to reports of domestic violence classified as being less urgent in five out of the 26 Safe at Home support services.<sup>29</sup> The risk exists that this waiting period will become longer and that, in time, urgent reports, too, cannot be processed directly. Municipalities have to monitor the functioning of Safe at Home centres and shelters and should ensure sufficient capacity and good quality of its services. Many municipalities omit to fulfil their monitoring role properly possibly at the cost of the quality of support and protection services.<sup>30</sup>

Suggestion for a question:

What does the government intend to do to ensure that all victims of violence have access to high-quality protection and support services and specialist aid at the local level without delay?

### *Shelter*

The Convention requires states to provide sufficient shelters for victims, especially women and their children. Shelter organisations report that there are not sufficient shelters for victims. Municipalities have cut on the capacity of shelter. These budget cuts have had serious consequences for the access to women's shelter for victims of domestic violence. Some shelters have had to cut back their budget by 50%. Women not admitted to the shelter are offered ambulatory care, which is by its nature less intensive and may not always be adequate.

In response to complaints by the shelter organisations, the Minister of Health, Welfare and Sport provided additional funding to municipalities. According to municipalities this is still insufficient to fund the shelter organisations. The funding is not earmarked, so theoretically it could also be spent differently. As regards the responsibility to ensure sufficient capacity, municipalities and the central government point at each other.

Due to the limited capacity of shelters victims in urgent need sometimes have to stay in a hotel room without the necessary care or have to go to another region. Another problem is that the criteria for access to shelter become stricter. Municipalities have to provide victims with a disposition with the decision whether or not access to shelter is granted. Oftentimes victims do not receive a disposition which makes it impossible for them to challenge the decision.

Some issues require central coordination because they surpass the local level. An example is that victims in shelters who have debts can often not move to another municipality because of their debts and because debt assistance is limited to the municipality they live in. There is limited social housing available so the circulation in shelters is hampered.<sup>31</sup> Because municipalities have different policies and practices, too often much time passes

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<sup>29</sup> Inspectie Gezondheidszorg en Jeugd, *Herbeoordeling twaalf Veilig Thuis organisaties* [Reassessment twelve Safe at Home centres], 17 November 2017.

<sup>30</sup> Nationale ombudsman, *Vrouwen in de knel. Een onderzoek naar knelpunten in de vrouwenopvang* [Investigation into bottlenecks in women's shelters], Den Haag: Nationale ombudsman, 2017.

<sup>31</sup> Nationale Ombudsman, *Vrouwen in de knel*, 2017.

before victims can move to another region if their safety so demands. Meanwhile they do not receive the care they need.

Victims in shelters need more assistance to deal with the complexity and number of regulations applicable. It takes a long time and involves a lot of bureaucracy to clarify the income of the victim and meanwhile her debt increases. Many women do not know what they sign up for upon entry and leave the shelter in debt, unaware of consequences of their stay for social benefits and expenditures.<sup>32</sup>

Suggestions for questions:

How does the government guarantee appropriate, easily accessible shelter in sufficient numbers?

What does the government do to make sure that support services are adequately monitored?

How will the government arrange central coordination for issues that cannot be dealt with at the local level?

#### **IV.D. Specialist support services**

##### *Specialist support services for victims of sexual violence*

At the Sexual Assault Centre a team of doctors, nurses, police officers, psychologists, social workers and sex therapists work together to provide specialist care to victims of sexual assault and rape. Because their work is not limited to (medical) care but may also include forensic research to record potential evidence for the police, various parties are involved. There is one national coordinator to coordinate the various national activities such as website, phone number, data collection, and education of the professionals involved. However, the Sexual Assault Centre reports that it is unclear what party is responsible for its functioning. The absence of a clear assignment and contact point on a national level hinders the work of the Sexual Assault Centre.

The support and forensic research provided to victims is not free of charge. Victims aged 18 and older have to pay the compulsory excess of their health insurance. Some victims choose not to use the services of the Sexual Assault Centre, including the forensic medical research, because of these costs. The Sexual Assault Centre pleads that its services should be free of the mandatory excess, for instance with the contribution of the Violence Offences Compensation Fund. The Ministry of Health, Welfare and Sport is currently looking into the matter.

Suggestions for questions:

How will the government arrange central coordination of the various parties commissioning the Sexual Assault Centre?

Will the government make sure that the services of the Sexual Assault Centre are free of charge for victims of sexual violence?

##### *Specialist support services for women and girls with disabilities*

Policy and practice on violence against women and girls with disabilities

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<sup>32</sup> Nationale Ombudsman, *Vrouwen in de knel*, 2017.

There are no comprehensive data on the various forms of violence against persons with disabilities, neither on domestic violence, nor on violence in the public sphere. The Institute has commissioned a research into the Dutch policy and practice on violence against women with disabilities.<sup>33</sup> This study shows that there is little awareness of the intersection of gender and disability at the level of policy makers in central and local government. Most policy measures apply to all persons. The most recent government policy document on domestic violence does not address violence against women with disabilities. Quite a number of measures do pay attention to persons in a vulnerable situation, which is understood to include persons with a disability. There is no attention for women with disabilities. Local governments work with the concept of tailored support (*maatwerk*), rather than on the basis of policies developed for groups. This hinders the development of the understanding of the specific needs of women with disabilities. Also, there is no insight into the effectiveness of measures to guarantee their right to be free from violence.

As far as practice is concerned, the research showed that tools and materials are available to train professionals in addressing violence against persons with disabilities. However, most of this material concerns women and girls with a mild intellectual disability. There is a lack of materials concerning women with physical or sensory disabilities. Only in the case of sexual violence, there is specific attention for women and girls. In the view of some professionals, the downside is a lack of attention for sexual violence against men and boys. Among professionals, there is hardly any awareness of the intersection of gender and disability. The report concludes that effectiveness of material aimed at awareness raising and training is not examined.

Suggestion for question:

What measures will the government take to collect all the necessary data on the various forms of violence in the private sphere, in institutional settings and in the public sphere?

### *Sexual violence against persons with disabilities*

Research results published in 2011 show that persons with a disability are at a high risk of becoming a victim of sexual violence. For all forms of sexual violence examined, women faced a significantly higher risk than men. In particular women with an intellectual disability were found to be at a very high risk: 61% reported that they had experienced sexual violence. For men, this figure was 23%.<sup>34</sup> Since the publication of this research, various measures have been taken to prevent and combat sexual violence. Nevertheless, experts warn that sexual violence against persons with intellectual disabilities is a large and serious problem, and remains largely unnoticed, because the victims do not easily speak about the violence.<sup>35</sup>

### *Support for persons with disabilities who are a victim of sexual violence*

The government report does not address whether any particular measures are in place to guarantee the recovery, rehabilitation and social reintegration of persons with disabilities

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<sup>33</sup> Suna Duysak, Leonie Bakker & Katrien de Vaan, *Geweld tegen meisjes en vrouwen met een beperking. Invulling van mensenrechtelijke verplichtingen in Nederland: een inventarisatie* [Violence against girls and women with a disability], Amsterdam: Regioplan, 2018 [to be published].

<sup>34</sup> W. van Berlo et al., *Beperkt weerbaar. Een onderzoek naar seksueel geweld bij mensen met een lichamelijke, zintuiglijke of verstandelijke beperking*. [Limited resilience. An investigation into sexual violence among persons with a physical, sensory or intellectual disability], Utrecht: Rutgers WPF/MOVISIE, 2011.

<sup>35</sup> Mischa de Winter, in a [reaction](#) to a news item.

who become victims of any form of exploitation, violence or abuse. Institutions for residential care of persons with disabilities generally have a protocol on sexual abuse.<sup>36</sup> Nevertheless, professionals do not always know how to provide adequate support and counselling to victims of sexual violence. There are only few indictments and criminal convictions for sexual violence against persons with disabilities. Experts have pointed out that the protocols followed by the police have as a consequence that persons with an intellectual disability decide not to submit a formal complaint against a perpetrator. In particular, the protocol prescribes that the police must explain all consequences of a formal report. This discourages victims, in particular victims with an intellectual disability, from continuing the procedure.<sup>37</sup> The absence of criminal proceedings also has as a result that obtaining financial compensation is more complicated.

Suggestion for questions:

What measures will the government take to guarantee that police and other professionals who deal with victims of different forms of violence and exploitation have the necessary expertise to adequately protect the human rights of persons with disabilities, and to apply a gender perspective in their work?

What measures will the government take to guarantee that victims of these forms of violence will be rehabilitated and compensated?

#### IV.F. Child witnesses

There is insufficient support for children as a witness and victim of domestic violence. The safety of children in families where domestic violence occurs is even after reporting and support not self-evident.<sup>38</sup> It is of importance that their safety is taken care of long-term and structurally monitored. The social neighbourhood teams and centre for youth and family need specialised knowledge about child abuse.<sup>39</sup> Safe at Home centres delegate approximately two-thirds of the reports to local actors such as the social neighbourhood teams. These teams are however not always sufficiently equipped to address domestic violence adequately or to assess the risks for children growing up.<sup>40</sup> Social neighbourhood teams should have specialised expertise about the complex issues of children and families. Specialised professionals should also involve children in their approach to tackle domestic violence. Their voice is often not heard. Municipalities do not monitor whether local preventive policies geared towards a specific group with an increased risk of domestic

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<sup>36</sup> It is not mandatory to have such a protocol, but Health and Youth Inspectorate uses it in its monitoring work as a criterion in examining whether adequate measures have been taken.

<sup>37</sup> Aafke Scharloo, <https://www.lotjeenco.nl/eerlijk-gezegd-de-cijfers-en-signalen/> and A. Scharloo, S. Ebbers & M. Spijker: *SOS - Snelle opvang na seksueel misbruik van mensen met een verstandelijke beperking* [SOS - rapid support after sexual abuse of persons with an intellectual disability], BSL 2014.

<sup>38</sup> Bas Tierolf, Katinka Lünemann & Majone Steketee, *Doorbreken geweldspatroom vraagt gespecialiseerde hulp* [Breaking the pattern of violence requires specialist support], Utrecht: Verwey-Jonker Instituut, 2014.

<sup>39</sup> UNICEF Nederland and Defence for Children, *Jaarbericht Kinderrechten 2018, Kinderen in Nederland, 2018.*

<sup>40</sup> Silke van Arum & Thijs van den Enden, *Rapport Sociale (wijk)teams opnieuw uitgelicht* [Social neighbourhood teams in the picture], Utrecht: Movisie, 2018; Toezicht Sociaal Domein/Samenwerkend Toezicht Jeugd, *Rapport Het wijkteam en kwetsbare gezinnen* [The social neighbourhood team and vulnerable families], Utrecht: TSD/STJ, 2017.

violence achieve their goal.<sup>41</sup> Municipalities should assess whether the specific group is reached.

Children in shelters are often not seen as clients themselves and do not receive the support they need. The focus of care and support is on their parents because funding is based on the number of adult clients in the shelter. Consequently, the budget to support children is inadequate and it takes a long time to receive funding for support for the child because it is financed from another budget than that of the parent. Moreover, the approval of the other parent is also necessary. Shared parental authority is also problematic when other decisions concerning the child are to be made, for instance about which school to go to and how to realise visiting rights without putting the other parent and child at risk.

Suggestions for questions:

How does the government guarantee that children who are victims of domestic violence receive the specialised support they need at home and in a shelter and that their voice is heard?

How will the government solve the problems victims in a shelter face because of shared parental authority?

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<sup>41</sup> Erik Jan de Wilde et al. *De gemeentelijke inzet voor preventie van kindermishandeling. Stand van zaken oktober 2017* [The local efforts for the prevention of violence against children], Utrecht / Den Haag: Nederlands Jeugdinstituut / Kinderombudsman, 2017.

## Chapter V: Substantive law

### V.A.2. Legal framework

There is not one all-encompassing law covering all forms of violence against women and domestic violence. Different provisions in criminal law, administrative law and civil law apply. The government report does not identify any points for improvement and thus appears to hold the position that Dutch legislation is in full conformity with the Convention. However, the Institute submits that the legal framework does not cover all substantive legal obligations contained in the Convention and that a number of amendments needs to be made. The Institute has identified problems in the criminalisation of sexual violence and psychological violence. Its comments are included in the following sections.

### V.B. Guidance for professionals on the implementation of the legal framework: the case of domestic violence and the police

Guaranteeing the implementation of the legal framework in conformity with the Convention requires much more effort by the government. The government report does not contain any information on this aspect. There are, however, various protocols. None of these contain references to the Convention, and it is not clear whether the government has examined whether they are in compliance with the Convention obligations. The Institutes has selected two examples.

#### *Guidance on application of criminal law*

Instructions adopted by the Board of Prosecutors General contain the investigation and prosecution policy on specific issues. Two instructions are particularly relevant for the Convention. These are the Instruction on domestic violence and violence against children<sup>42</sup> (in force 1 May 2016) and the Instruction on sexual offences (in force 1 May 2016).<sup>43</sup> The former covers forms of violence where the victim is in some form of relationship of dependency with the perpetrator. It covers for example intimate partner violence, stalking, violence against children, violence against older persons, honour related violence, female genital mutilation, forced marriage and abandonment. It also covers violence in care institutions. This Instruction sets out the specific roles of the police and the need to consult other professionals. The Instruction acknowledges that stereotypes on the roles of women and men can sometimes play a role and domestic violence against women occurs more frequently than against men.

#### *Guidance for professionals dealing with victims of violence*

From 1 January 2019, professionals must report situations of imminent or structural unsafety to Safe at Home centres.<sup>44</sup> Professional organisations are obliged to have a protocol on reporting domestic violence and violence against children. In July 2018, the

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<sup>42</sup> <https://www.om.nl/organisatie/beleidsregels/overzicht-0/jeugd-zeden/@97417/aanwijzing-huiselijk/>

<sup>43</sup> <https://www.om.nl/organisatie/beleidsregels/overzicht-0/jeugd-zeden/@94030/aanwijzing-zeden/>

<sup>44</sup> Different rules apply to professionals with a duty of professional confidentiality.

government published a basic document, containing a framework for assessing which cases must be reported.<sup>45</sup>

The Institute has taken these two examples because they contain recent instructions and are very relevant in the fight against domestic violence and violence against women. Combating domestic violence is a high priority for the government. But these documents contain no reference to the Convention of Istanbul, nor to other human rights norms. So therefore the question is whether the Convention has played any role in drafting these instructions and protocols and whether they fully comply with the general and specific obligations laid down in the Convention.

Suggestion for questions:

Has the government taken into account the Convention of Istanbul in drawing up instructions and guidance for various professionals? If not, how will it monitor whether they are applied in conformity with the Convention obligations?

Does the government intend to see to it that the Convention will play a role in the further development of the instructions and guidance and the implementation thereof in practice?

#### *Police and domestic violence*

Data on reported cases which do or do not result in prosecution and conviction are difficult to obtain. There is significant under-reporting of cases of domestic violence and violence against women. In addition, in a large number of cases reported to the police, victims do not wish that their initial report is dealt with as a reported crime. This can result in the discontinuation of the examination of their report, unless there are sufficient grounds for the police to continue the criminal investigation without such a complaint. In information submitted to CEDAW, the government reported that ‘Every year the police deal with some 95,000 incidents of domestic violence in connection with which they make about 15,000 arrests. The Public Prosecution Service handles around 11,000 to 12,000 domestic violence cases a year. (...)’<sup>46</sup> There is no clarification of the low number of arrests. There is no further information about the number of convictions, nor of compensation awarded to victims.

According to a publication by Statistics Netherlands, well over half the number of women murdered between 2011-2015 were killed by their partners or ex-partners.<sup>47</sup> In a number of cases, victims had turned to the police to report that they were threatened. One such case, concerning a woman who was murdered by her ex-partner, has been thoroughly examined by a commission that was established by the police force involved. The report of this investigation showed, among others, that the police did not respond firmly enough to the victim’s reports and paid insufficient attention to her interests and needs. Instead, the police focused on preparing a file for the public prosecutor to be used in a criminal trial. Recommendations concerned procedural aspects of handling reports and the need to pay due attention to the victim’s perspective. It was noted that the imbalance in attention for

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<sup>45</sup> Basisdocument. Het afwegingskader in de Meldcode huiselijk geweld en kindermishandeling. [Basic document. Framework for assessment in the protocol domestic violence and violence against children]. The Hague: ministry of Justice and Security and ministry of Health, Welfare and Sports, July 2018.

<sup>46</sup> CEDAW/C/NLD/Q/6/Add.1, List of issues and questions in relation to the sixth periodic report of the Netherlands. Addendum. Replies of the Netherlands to the list of issues (2016), par. 66.

<sup>47</sup> CBS, Laagste aantal moorden in 20 jaar [Lowest number of murders in 20 years], 29 July 2016.

the victims' needs and the efforts made to prepare for prosecution required attention at the national level.<sup>48</sup> In his response to the report, the minister of Justice and Security referred to measures to improve coordination between various authorities, but also noted that much will depend on the assessment made by individual police officers.<sup>49</sup>

The question therefore rises, which steps have been taken to improve the process of handling cases and which measures have been taken to improve the expertise of the police officers with respect to the gender dimensions of, *inter alia*, domestic violence. In the section on training professionals, the government presents some general information on training of the police and public prosecutors (section III.3). The information presented reveals that specific training on domestic violence and violence against women is incidental, on a voluntary basis only and does not explicitly address gender issues. An exception is made for cases in which there is reason to believe that (domestic) violence may be honour-related. The National centre of expertise on honour-related violence provides for training of police officials and has published specific training materials.<sup>50</sup> These training materials do include a gender perspective.

The Institute recognises that the police encounter many different situations in a very diverse society. This requires a wide variety of expertise and skills. Consequently, the government should permanently invest in strengthening and keeping up-to-date the expertise and skills of police officers and public prosecutors on the different forms of violence against women and domestic violence.

Suggestion for questions:

Which measures will the government take to train the police and public prosecutor on the various forms of gender based violence?

#### **V.D. Compensation for victims of violence against women (article 30)**

Requests for compensation for victims of a crime generally take place in the context of the criminal trial of the offender. The Code of Criminal Procedure (Section 51f), allows the victim to file a civil claim based on Section 6:162 Dutch Civil Code. In so doing, the victim requests financial compensation from the offender. The government report describes the rules, but does not contain information about practice. In 2016, a report was published on the findings of a research into the practice of this procedure.<sup>51</sup>

Since the criminal trial is the primary procedure, the law requires that the civil claim should not impose a disproportionate burden on the criminal trial (Section 361, par. 3 Code of Criminal Procedure). Victims are offered support by a victim support desk. It was found that the pre-trial procedures do not always run smoothly. For example, there is a risk that

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<sup>48</sup> Commissie Eenhoorn, *Conclusies en aanbevelingen onderzoeksrapport Twee Steden*, [Conclusions and recommendations research report Two Cities] 17 mei 2016.

<sup>49</sup> Minister van Veiligheid en Justitie, *Beleidsreactie op de onderzoeksrapporten Twee Steden*, [Policy response to the research report Two Cities] 22 juni 2016.

<sup>50</sup> Janine Janssen, *Focus op eer. Een verkenning van eezaken voor politieambtenaren en ander professionals* [Focus on honour. Exploring honour cases for police officers and other professionals]. Den Haag: Boom Criminologie, 2017.

<sup>51</sup> The following section is largely based on the English summary in R.S.B. Kool *et al.*, *Civiel schadeverhaal via het strafproces. Een verkenning van de rechtspraktijk en regelgeving betreffende de voeging benadeelde partij* [Civil compensation in a criminal trial. An exploration of legal practice and regulations on the injured party joining proceedings], Utrecht: Ucall (Utrecht Centre for Accountability and Liability Law), 2016.

injured parties are not registered. Such administrative matters can have consequences for the trial stage, because it may disturb proceedings if the defendant is unaware of the victim's claim. Also, it was found that Victim Support Netherlands does not always have the capacity to provide all necessary assistance. Claims for compensation can concern material as well as immaterial damages. The researchers found a significant discrepancy between the amounts claimed and awarded. Lawyers as well as Victim Support Netherlands have complained about shortcomings in the motivation of awarding lower amounts in damages. On the other hand, public prosecutors and courts have argued that claims are not always adequately substantiated.

In cases where victims of violence have suffered serious injuries but cannot claim damages in a criminal trial or in civil proceedings against the offender, they can submit a request for compensation to the Fund for victims of violence. However, various stakeholders interviewed by the Institute have noted that obtaining compensation in such a case is very difficult.

Suggestion for questions:

Please provide further information about the possibilities for obtaining compensation from offenders and the state, also in cases where there is no criminal prosecution or conviction.

Please provide further information about the assessment of the amount for immaterial damages.

## V.F. Criminalisation

### *V.F.1 Article 33 Psychological violence*

Psychological violence falls within the scope of domestic violence as used in government policy papers. Victims of psychological violence have access to shelter and support services. It is, however, insufficiently clear whether the criminal law provisions on psychological violence are in conformity with article 33 of the Convention.

According to the government, psychological violence is a criminal offence if it falls within the scope of section 284 of the Criminal Code. This is the case if someone unlawfully compels another person to act or to refrain from certain acts or to tolerate certain acts by an act of violence or any other act or by threat of violence or threat of any other act, either directed against that other or against others. It is criminal only if the perpetrator had the intention to compel the victim to act or refrain from acting.

The explanatory report to the Convention states that article 33 covers 'intentional conduct which **seriously** impairs and damages a person's psychological integrity'.<sup>52</sup> The question is, whether Section 284 is in compliance with article 33, since it must be proven that the victim was compelled to act - or not to act. Also, it is inconclusive whether this section covers an 'abusive pattern of behaviour'.<sup>53</sup>

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<sup>52</sup> Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, par. 180 (emphasis in original).

<sup>53</sup> Explanatory report, *supra* note 52, par. 181.

The relevance of the provisions on assault for situations of psychological violence is not mentioned by the government. The Institute considers that section 300 of the Criminal Code should have been discussed in this section of the report.

The most recent government policy document on domestic violence, entitled *Violence does not belong at home*, lists psychological violence as one of the criminal manifestations of assault under section 300 of the Criminal Code.<sup>54</sup> However, practice shows that prosecution of psychological violence rarely occurs, probably because proving the facts is very difficult.<sup>55</sup> In a case involving two minors, the Court of Appeal of The Hague has accepted in 2017 that psychological violence, which included belittling, humiliation and locking up qualifies as assault within the scope of section 300 of the Criminal Code. The Court of Appeal stated that not each belittling or humiliating act of comment constitutes assault within the meaning of article 300 of the Criminal Code. It depends on the circumstances of the case, including the nature of the acts and the circumstances in which these took place.<sup>56</sup> This ruling constituted a novelty.<sup>57</sup>

There is insufficient practice to conclude that the current provisions in the Criminal Code do or do not comply with the Convention. In more than half of all domestic violence cases reported to the police psychological violence plays a role.<sup>58</sup> The absence of court cases can be seen as an indication that the threshold for protection against psychological violence is too high.

Suggestion for questions:

Does the government hold the view that psychological violence against women can effectively be prosecuted under section 300 of the Criminal Code?

#### *V.F.4. Article 36 Sexual offence, including rape*

Law and interpretation of the law

The provisions on sexual violence in the Dutch Criminal Code do not meet with the requirements of article 36 of the Convention of Istanbul. Not all intentional non-consensual sexual acts are criminalised. The provision on rape (Section 242 of the Criminal Code) requires evidence of compulsion. Similarly, indecent assault (Section 246) constitutes a criminal offence only in case of compulsion. As a consequence, the threshold for prosecuting and convicting perpetrators of sexual violence, including rape, is too high to comply with the Convention standards. This criminal provision does not offer adequate protection to the victim.<sup>59</sup> The gap between non-consensual acts and compulsory acts is detrimental in particular to victims in a vulnerable situation, for example due to unequal power relations.

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<sup>54</sup> Geweld hoort nergens thuis, *supra* note 2, p. 59.

<sup>55</sup> This was concluded in relation to violence against elderly persons, 'Inleiding', *Justitiële verkenningen*, Vol. 41 (2015), No. 6, 2015, p. 5-6. In an interview K. Lindenberg observed that this is a more general problem.

<sup>56</sup> Court of Appeal The Hague, 31 May 2017, ECLI:NL:GHDHA:2017:1539.

<sup>57</sup> Miranda de Meijer in [NRC](#).

<sup>58</sup> H. Ferwerda & M. Hardeman, *Kijk .. dan zie je het! Huiselijk geweld geteld en verdiept* [Look .. then you will notice! Domestic violence counted and examined]. Arnhem: Bureau Beke, 2013, p. 16.

<sup>59</sup> Renée Kool, 'Verantwoorde seks. Een oriëntatie op de strafbaarstelling van verkrachting', in A.A. Franken, M. de Langen & M. Moerings (eds.), *Constance waarden, liber amicorum Constantijn Kelk*, p. 223-232.

The Criminal Code provides in Section 242 that:

‘Any person who by an act of violence or any other act or by threat of violence or threat of any other act compels a person to submit to acts comprising or including sexual penetration of the body shall be guilty of rape and shall be liable to a term of imprisonment not exceeding twelve years or a fine of the fifth category.’<sup>60</sup>

Neither in the explanatory memorandum to the bill approving ratification,<sup>61</sup> nor in its report submitted to GREVIO, the government addresses the gap in the level of protection in the law. The fact that there is a significant gap, is demonstrated by jurisprudence on the meaning of ‘compels a person’. The Supreme Court has ruled that compelling another person by an act requires that by this act the suspect deliberately caused that the victim had to undergo the acts against their will. Only when the suspect has deliberately exercised such psychological pressure or brought the victim in such a dependent situation that they could not resist the sexual acts, or when the suspect deliberately brought the victim in such a (threatening) situation, that it was so difficult for them to withdraw from these acts, there was compulsion by the suspect.<sup>62</sup> The sexual act has to have been ‘inescapable’.<sup>63</sup>

In other words, it should be made clear that the victim resisted the sexual acts, or that it is clear why they did not. Compelling implies that there was no reasonable choice for the victim and that the perpetrator knew or at least suspected this. This is generally referred to as the requirement of inescapability.<sup>64</sup> Experts have pointed out that victims are told by the police that they have not been the victim of rape, because they have not made sufficiently clear that they did not consent to sex.<sup>65</sup> Also, when the sexual assault causes a state of tonic immobility of the victim,<sup>66</sup> prosecution is likely to be unsuccessful, because such a state is not always obvious to the perpetrator.

#### Upcoming revision of the Criminal Code

At present, the chapter on sexual offences in the Criminal Code is being revised.<sup>67</sup> In a study (2016), experts concluded that it was hard to unquestionably consider the current legislation not to be in conformity with article 36 of the Convention. But they did state that this provision, at the least, implies a strong recommendation to broaden the contents or interpretation of article 242 of the Criminal Code.<sup>68</sup> However, the experts concerned have reached a different insight since the publication of the study. Upon re-examination of this provision and the jurisprudence of the European Court of Human Rights they have reached the conclusion that the current criminal provisions, especially in relation to the

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<sup>60</sup> English version taken from <http://www.legislationline.org/documents/section/criminal-codes/country/12>

<sup>61</sup> Goedkeuringswet, Kamerstukken II, 2014-2015, 34038 (R2039), nr. 3, p. 32.

<sup>62</sup> Supreme Court, NJ 2009,307, par. 2.5-2.6. [Translation by the Institute].

<sup>63</sup> K.K. Lindenberg & A.A. van Dijk, *Herziening van de zedendelicten? Een analyse van Titel XIV, Tweede Boek, Wetboek van Strafrecht met het oog op samenhang, complexiteit en normstelling, [Overhaul of the Dutch sexual offences? An analysis of the Dutch sexual offences in terms of consistency, complexity and standards]* Groningen: Rijksuniversiteit Groningen, 2016, p. 223 *et seq.*

<sup>64</sup> Supreme Court, NJ 2009, 307, conclusion of Attorney-General.

<sup>65</sup> Margeet de Boer, *Geen ja is nee? Het Verdrag van Istanbul en de strafbaarstelling van onvrijwillige seks*, [Blog](#) posted on 25 November 2015.

<sup>66</sup> According to research, this occurs to the majority of rape victims: approximately 70%. A. Möller *et al.*, ‘Tonic immobility during sexual assault - a common reaction predicting post-traumatic stress disorder and severe depression’, [Acta Obstetricia et Gynecologica Scandinavica](#), online 7 June 2017.

<sup>67</sup> Parliamentary proceedings II, 2017-2018, 29279, nr. 427, letter from the minister of Justice to parliament, 1 may 2018. Consultation probably fall 2018.

<sup>68</sup> Lindenberg and van Dijk, *supra* note 63, p. 228.

relevant Dutch case law, are not compatible with the Convention.<sup>69</sup> The Institute shares this conclusion and urges amendment of the Criminal Code.

In the media, the minister has said not to be in favour of an amendment of the law to the effect that sex without consent constitutes rape.<sup>70</sup> When the draft act will be available, the Institute will advise on the compatibility of the proposed texts with article 36 of the Convention. According to the Institute, it should be clear that intentional non-consensual sexual acts should be criminalised.

Suggestion for questions:

Please provide an update on the state of affairs on the revision of the Criminal Code and which steps have been taken to guarantee that the proposed text complies with the Convention.

#### *V.F.5. & V.A. Articles 37 and 32: Forced marriage and marital captivity*

The issue of preventing forced marriage is a matter of public discourse in the Netherlands. More attention is needed, however, for the possibilities to leave a marriage that was concluded under coercion. Also, more attention is needed to dissolve marriages that were concluded with the free and full consent of spouses, but where the consent to stay in the marriage is absent.<sup>71</sup> More specifically, what has been defined as ‘marital captivity’ warrants additional legislative and policy measures.<sup>72</sup> Marital captivity is a situation in which an individual is held against her or his will in a religious marriage, because religious laws or regulations constitute an obstacle for dissolution of the marriage.<sup>73</sup> Marital captivity affects mainly women.

#### *Scope of the problem*

In 2014 a study on the scope of forced marriage, marital captivity and abandonment was published. No exact figures are available. 181 cases of forced marriage have been registered over the period 2011-2012, but experts estimate that the actual figure is between 674 and 1914 cases. 140 cases of marital captivity have been registered; the estimated actual scope is between 447 and 1687 cases.<sup>74</sup>

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<sup>69</sup> K. Lindenberg, Case note: ECHR, 24 May 2016, *I.C. v. Romania*, Appl. No. 36934/08, *EHRC* 2016/175, ECHR 15 March 2016, *M.G.C. v. Romania*, Appl. No. 61495/11, *EHRC* 2016/159 & ECHR 31 March 2016, A, B & C v. Latvia, Appl. No. 30808/11, *EHRC* 2016/163; interview with K. Lindenberg, 31 July 2018.

<sup>70</sup> <https://www.telegraaf.nl/nieuws/2324327/kabinet-geen-toestemmingsplicht-voor-seks>

<sup>71</sup> The CEDAW Committee and the CRC Committee have interpreted forced marriage to include a situation in which one of the parties is not permitted to end or leave it also constitutes a forced marriage. See CEDAW Committee and CRC Committee, *Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices*, CEDAW/C/GC/31-CRC/C/GC/18 (2014), par. 22.

<sup>72</sup> See in particular the Dutch NGO [Femmes for freedom](#), with an overview of various proposals it submitted to parliament since 2012.

<sup>73</sup> Definition in Pauline Kruiniger, *Niet langer geketend aan het huwelijk! Juridische instrumenten die huwelijkse gevangenschap kunnen voorkomen of oplossen*. [No longer chained to marriage! Legal instruments that can prevent or solve marital captivity], Maastricht: Maastricht University, 2018, p. 21.

<sup>74</sup> Eliane Smits van Waesberghe a.o., *Zo zijn we niet getrouwd, Een onderzoek naar omvang en aard van huwelijksdwang, achterlating en huwelijkse gevangenschap* [That was not what we agreed on. An investigation into the scope and nature of forced marriage, abandonment and marital captivity], Utrecht: Verwey-Jonker Instituut, 2014.

### *Criminal law provisions*

Compelling another person into marriage constitutes a criminal offence. This crime is covered by the general criminal law provision on compulsion (article 284 Criminal Code). This provision also covers compelling a person to stay in a marriage.<sup>75</sup> So far, no cases have been dealt with by a criminal court.<sup>76</sup> There may be various explanations. The threshold to establish 'coercion' in criminal-law terms is high. Particularly in situations of marital captivity, this threshold will not always be reached. Further, women who have been forced into marriage may hesitate to turn to the police, because they are not willing to feel the responsibility for a conviction of their husband and father of their children. Fear for reprisals, such as violent behaviour, exclusion, honour killings and child abduction by the husband or relatives constitutes another obstacle. And even if the other spouse is prosecuted, this does not guarantee that the marriage is dissolved under civil law and that the situation of marital captivity is terminated.

### *Civil law provisions*

The report the government submitted to GREVIO does not address the civil law consequences of forced marriage. The Forced Marriage (Prevention) Act entered into force on 5 December 2015. This Act regulates the civil-law consequences of a marriage concluded under coercion. The Dutch Public Prosecution Service may prevent a marriage if coercion is involved. In case a marriage has been concluded under coercion, either of the parties or the Public Prosecution Service may initiate proceedings seeking its annulment.

Experts have examined a number of legal strategies that can be used under current legislation. For example, the partner seeking dissolution of a religious marriage may request the court to order the husband to cooperate in the dissolution of the marriage under threat of a fine. The legal basis for such an order is that failure to cooperate in divorce proceedings is a wrongful act. The court may impose a fine to a party failing to observe the court order. The courts have ruled on a number of cases. Some of these resulted in the dissolution of the religious marriage, but some have not. Courts decide on a case-by-case basis and do not consider all situations of marital captivity to constitute a wrongful act. A court decision can result in the co-operation of the partner who until then refuses to agree to the dissolution of a religious marriage.<sup>77</sup> It is important that the legal profession is made aware of these possibilities. It is a significant step forward that the minister of Justice and Security has agreed to follow-up one of the suggestions on legal amendment, which is a step forward. The possibility to obtain compliance in ending a religious contract by means of a court order will be laid down more explicitly in law by an amendment of article 827 of the Code of Civil Procedure. It can then be added that such an order will not be granted if such cooperation cannot reasonably be expected. According to the minister, such a legal provision will increase awareness.<sup>78</sup>

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<sup>75</sup> Esther van Eijk, *Wel gescheiden, niet gescheiden? Een empirisch onderzoek naar huwelijkse gevangenschap in Nederland* [Divorced or not divorced? An empirical study on marital captivity in the Netherlands], Maastricht: Universiteit Maastricht, 2017, p. 2 (with further references to parliamentary proceedings), Kruiniger 2018, *supra* note 73, p. 90.

<sup>76</sup> Information from Handelingen TK 2017-2018, nr. 28, p. 26 (dossier 34775-VI).

<sup>77</sup> Kruiniger, *supra* note 73, p. 167-168.

<sup>78</sup> Minister of Justice, letter to parliament, dated 26 April 2018. Parliamentary proceedings, Tweede Kamer, vergaderjaar 2017-2018, 34 775 VI, nr. 101, p. 8, the consultation by internet on the draft bill 'combating marital captivity' <https://www.internetconsultatie.nl/huwelijksegevangenschaptegenaan>.

### *Gaps in civil law*

However, gaps remain: these measures cannot provide a solution for all cases. In order to guarantee that one partner's failure to cooperate hinders the dissolution of a religious marriage, additional legislative civil law measures are necessary.<sup>79</sup>

Problems occur where spouses are married under religious law or regulations only. Such marriages may have been entered into abroad. Even though it is illegal, there are instances of religious wedding ceremonies in the Netherlands that are not preceded by a civil wedding. In such cases, couples are in an informal marriage only. These relations cannot be dissolved by Dutch courts. As a consequence, there can be serious obstacles to dissolve such a marriage, and situations of marital captivity can arise. Remedying these situations, which in themselves constitute a form of violence against women, requires additional legislation.<sup>80</sup>

In his policy response to the report, the minister reaffirms that the Dutch Civil Code concerns itself with civil marriages only. He considers it inappropriate to introduce a legal obligation to the effect that spouses should accept that they must comply with the dissolution of their marriage. In the view of the government, this would constitute an unjustifiable interference in the way in which people practise their religion.<sup>81</sup> It is at this stage not clear how the minister intends to regulate how such marriages can be dissolved.

### *Training of professionals*

It is difficult for victims and relatives to come forward to report forced marriage, including marital captivity, and to provide evidence. Reporting carries a risk of reprisals by the other spouse or other relatives. Therefore, specific training and awareness raising of professionals and the women whom it may affect is required, as well as protective measures. In the development of training materials and awareness raising, it is crucial that women who have the necessary expertise on all aspects related to marital captivity are actively involved.

Suggestion for questions:

What measures will the government take to guarantee that women who find themselves in a situation of marital captivity will have access to a court to have their marriage dissolved?

What measures will the government take to guarantee the participation of women with knowledge of practice in the development of policy and materials for training and awareness raising?

What measures will the Dutch government take to strengthen the legal status and legal remedies for women in (transnational) marital captivity in order to obtain a status of divorcee in all countries involved in her situation?

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<sup>79</sup> See also *Femmes for freedom*, *supra* note 72, Kruiniger, *supra* note 73, p. 163-166.

<sup>80</sup> Kruiniger, *supra* note 73, p. 163-165.

<sup>81</sup> Minister for legal protection, letter to parliament, dated 26 April 2018. Parliamentary proceedings, Tweede Kamer, vergaderjaar 2017-2018, 34 775 VI, nr. 101, p. 8-9.

## Chapter VI: Investigation, prosecution and procedural law and protective measures

### VI.A. Prompt response law enforcement officials

The number of victims of sexual offences reporting a crime is low. It is on average 16 percent.<sup>82</sup> There are indications that women with an immigration background are less likely to report a sexual offence. It has been brought forward that the police is not sufficiently sensitive to adequately address cultural differences among women.<sup>83</sup>

Research concluded that victims have reported that they feel discouraged by the police, because police officers confront them with all obstacles the police encounter in their investigation. Further they fear not to be believed or to be questioned about their own behaviour.<sup>84</sup>

Victims of sexual violence can find information on the police website,<sup>85</sup> which was recently amended following criticism that the previous version easily discouraged victims to report the violence as a crime.<sup>86</sup> The police consulted with experts on sexual violence, including organisations assisting victims.<sup>87</sup> The Institute considers this to be a good step forward. In light of the obligations of the Convention, the Institute urges the Government to see to it that the police is capable to deal with victims of sexual violence in a gendersensitive manner and culturally sensitive.

In cases where the sexual offence occurred very recently, the police immediately starts an investigation. However, in situations where a sexual offence took place more than eight days before a victim turns to the police, it can take quite some time before they can meet with the police. Furthermore, on average it takes two years before a case is dealt with by a criminal court.<sup>88</sup>

Suggestion for question:

What steps will the government take to guarantee that the police has the necessary capacity and skills to deal with all victims of sexual violence and to guarantee that all victims who wish to do so report sexual offences?

What steps does the government take to guarantee that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay?

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<sup>82</sup> Regioplan, *Slachtoffers van zedenmisdriven, Een verkenning van de overwegingen voor contact met politie en/of hulpverlening*, [Victims of sexual offences. A study of the considerations for contacting police and/or support services], Amsterdam: Regioplan, 2017, p. 1 (with further references).

<sup>83</sup> Proceedings Second Chamber, 2017-2018, 33 552, no. 42, p. 25.

<sup>84</sup> Regioplan, *supra* note 82, p. 53.

<sup>85</sup> <https://www.politie.nl/themas/seksueel-misbruik.html>

<sup>86</sup> Regioplan, *supra* note 82. Following discussions in Parliament, the minister for Legal Protection requested the police to amend the text on the website. Discussion to be found in Proceedings Second Chamber, 2017-2018, 33 552, no. 42, p. 25. The prosecutor can decide to proceed with prosecution also in the absence of a formal report by the victim.

<sup>87</sup> Proceedings Second chamber, 2017-2018, 33 552, no. 48, p. 4.

<sup>88</sup> Regioplan, *supra* note 82, p. 54-55.

## VI.C. Temporary exclusion order

Under the Temporary domestic exclusion order act, mayors have the authority to issue a temporary exclusion order for a period of ten days, which may be extended. Violation of the temporary exclusion order constitutes a criminal offence. In such cases, perpetrators are not automatically brought before an examining judge, because this is subject to additional conditions under the Code of criminal procedure. The Instruction on domestic violence and violence against children states that in cases where the health or security of individuals is in danger, the perpetrator is brought before the examining judge. Decisions are taken on a case by case basis.<sup>89</sup>

The mayor may impose such an order in the case of serious and immediate danger for individuals' security. It is a preventive measure. A guide for mayors and other professionals was published in 2015 to explain under which circumstances these orders may be issued and to assist in the decision making. One of the aims of the exclusion order is to initiate support to the (potential) victim and the (potential) perpetrator.<sup>90</sup> Since this measure is an administrative law measure, victims and perpetrators cannot be forced to accept the support measures. The guide mentions as a possible means to persuade individuals to accept support measures that it is communicated to them that not participating in a support programme may lead to starting criminal proceedings. The report evaluating the Temporary domestic exclusion act concluded that the safety of individuals after the expiration of a domestic exclusion order is not always guaranteed, because additional protective measures under criminal law often do not take effect immediately.<sup>91</sup>

Suggestion for questions:

Please provide information about the effectiveness of the Temporary domestic exclusion order act for cases of domestic violence against women.

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<sup>89</sup> Instruction on domestic violence, *supra* note 42, par. 3.2.

<sup>90</sup> K.B.M. de Vaan & W. Smit, *De Wet tijdelijk huisverbod Een handreiking voor gemeenten en professionals* [The Temporary domestic exclusion act. A guide for municipalities and professionals], Amsterdam: Regioplan, 2015. The guide was published following an evaluation of the Temporary domestic exclusion order act.

<sup>91</sup> K. de Vaan *et al.*, *Knelpunten in de uitvoering van de Wet tijdelijk huisverbod* [Bottlenecks in the implementation of Temporary domestic exclusion order act], Amsterdam: Regioplan, 2013.

## Chapter VII: Migration and asylum

### VII.A Migrant women and autonomous residence permits

The findings of a study on immigration for the purpose of marriage in the Netherlands show that women holding a dependent residence permit are especially vulnerable when becoming a victim of domestic violence.<sup>92</sup> These women are eligible for an autonomous residence permit only after having resided in the Netherlands for five years. It is very difficult for them to obtain an autonomous residence permit prior to this time. Women who have had a dependent residence permit for less than five years, must prove that there has been a situation of domestic violence by submitting evidence that they have reported the violence to the police. In addition they must submit documents provided by support services, such as a medical statement provided by a doctor or a statement from a shelter.<sup>93</sup> Victims of honour-related violence additionally have to prove that the threat of such violence is present in their countries of origin as well.

The perpetrators of the violence use the fear their victims have of being deported and/or losing their right of residence as a weapon to prevent them from seeking help or applying for a divorce. For marriage migrants holding a dependent residence permit, a lack of awareness of their rights or fear of honour-related violence or reprisals by the perpetrator can prevent them from seeking assistance. For undocumented migrants the threshold to seek assistance is also high because they fear the consequences.<sup>94</sup> The Dutch agencies and services do not always take the situation the marriage migrants find themselves in into account, resulting in them not being able to offer suitable assistance. Making it easier for victims of domestic or honour-related violence to obtain an independent residence permit and improving access to assistance allows for improved protection of this vulnerable group of women.

Suggestion for a question:

What does the government intend to do to ensure the adequate protection of victims of domestic violence who depend on their partner for their residency status and the availability of high-quality assistance?

### VII.E Protection of women asylum seekers

Neither in research, nor in policy papers has the situation of violence against women refugees in reception centres for asylum seekers received much attention. In 2016, however, an exploratory study was published on the safety of women in families in reception centres.<sup>95</sup> This showed that in addition to general risk factors contributing to domestic violence, the situation in a reception centre in itself constitutes a risk factor. Contributing elements are stress and uncertainty about the outcome of the asylum

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<sup>92</sup> L. Sterckx *et al.*, *Huwelijksmigratie in Nederland, Achtergronden en leefsituatie van huwelijksmigranten* [Immigration for the purpose of marriage in the Netherlands], Den Haag: SCP, 2014, p. 30.

<sup>93</sup> Ministry of Justice and Security, Immigration services, *Huiselijk geweld, eergerelateerd geweld, mensenhandel, achterlating en uw verblijfsvergunning* [Domestic violence, honour-related violence, human trafficking, abandonment and your residence permit], The Hague: IND, 2018, p. 3.

<sup>94</sup> W. Jongebreur *et al.*, *Toegang tot de opvang van slachtoffers zonder eerdere verblijfsvergunning* [Access to shelter for victims without a prior residence permit], Barneveld: Significant, 2017.

<sup>95</sup> E. Smits van Waesberghe, M. van Dijk, met medewerking van H. Bakker, *Huiselijk geweld en veiligheid in asielopvangcentra* [Domestic violence and safety in reception centres for asylum seekers], Utrecht: Kennisplatform Integratie & Samenleving, 2017.

procedure and limited privacy. Further, it was found that men may feel that their masculinity is compromised. While they may have been breadwinners in their country of origin, they are not allowed to work during the asylum proceedings. Also, women often find themselves in a dependent situation. If they enter the Netherlands in the context of family reunification to join their husband with an asylum residence permit, they receive a dependent asylum residence permit.<sup>96</sup> This situation of dependency constitutes an obstacle for them to report violence and it is a factor that contributes to partner violence in reception centres.<sup>97</sup> The study found that there is room for improvement as regards supporting asylum seekers in preventing and combating domestic violence. One of the concrete recommendations was to train professionals within the reception centres as well as in the general support services available to victims of domestic violence.

Suggestion for questions:

Which steps has the government taken to guarantee the women refugees' right to be free from domestic violence during their stay in a reception centre?

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<sup>96</sup> Rules are explained in the brochure IND, *The family reunification procedure for holders of an asylum residence permit*, available at ind.nl.

<sup>97</sup> Smits van Wasberghe & Van Dijk, *supra* note 95, p. 6.

## Annex

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