

## Netherlands

In 2010, the Kingdom of the Netherlands underwent constitutional reforms (Government of the Netherlands, 2017). Under the new structure, the Kingdom of the Netherlands consists of four countries: the Netherlands, Aruba, Curaçao and St Maarten (Government of the Netherlands, 2017). Bonaire, St Eustatius and Saba – which were previously part of the Netherlands Antilles together with Curaçao and St Maarten – are now part of the country of the Netherlands (Government of the Netherlands, 2017). Each of the four countries is autonomous in its implementation of the obligations stemming from the different human rights conventions, including the Convention on Elimination of Discrimination against Women and the Istanbul Convention, and each has its own Constitutions and secondary legislation, including Civil and Criminal Codes, and related policies (Government of the Netherlands, 2017).

### 1. Discrimination in the family

#### a) Overarching legal framework for marriage

Women have the same rights as men to enter into marriage in the Netherlands (Civil Code, 1992 as amended).

In 2001, the Netherlands became the first country in the world to legally recognize same-sex partnerships (Act of 21 December amending the Civil Code, 2001). With the parliamentary adoption of an amendment to the Civil Code of Aruba concerning the law of persons and family in September 2016, registered partnerships are also possible for civil unions between both same-sex and heterosexual couples in Aruba (Government of the Netherlands, 2017).

The Dutch Civil Code and its family law provisions do not provide for a set of legal rules regulating the entering into, the legal effects and the ending of informal relationships (Government of the Netherlands, 2015). Informal relationships are not systematically regulated by legislation (Government of the Netherlands, 2015). Non-marital cohabitation has legal effects in, for instance, maintenance law, rent law, inheritance law, criminal law, taxation law, pension law and social security law (Government of the Netherlands, 2015).

#### b) Child marriage

The legal age for marriage for both women and men is 18 years (Civil Code, 1992). Child and forced marriage has been reported among Roma, Sinti, immigrant and diaspora communities in the Netherlands (Dutch CEDAW Network, 2016). To counteract the phenomenon of child and/or forced marriage, the Netherlands adopted the Forced Marriages (Countermeasures) Act, which entered into force on 5 December 2015. Under the Act, people may no longer marry until they reach the age of 18, thus removing a previous provision that allowed for marriage at the age of 16 under exceptional circumstances (Government of the Netherlands, 2016).

Under the Forced Marriage Prevention Act, a Dutch national who has forced someone to marry abroad can be prosecuted in the Netherlands, even if forced marriage is not a criminal offence in the country where the marriage took place (Forced Marriage Prevention Act, 2015). The same applies to non-Dutch nationals who are permanent residents of the Netherlands (Forced Marriage Prevention Act, 2015). Should a marriage be concluded under coercion, either of the parties or the Public Prosecution Service may initiate proceedings seeking annulment (Government of the Netherlands, 2016).

In 2013, changes to the Criminal Code and the Criminal Procedure Code classified forced marriage a specifically severe form of coercion for which the maximum sentence has been raised from nine months to two years' imprisonment (Penal Code, 1881, as amended).

In 2015, the government began implementing the action program, '*Self Determination 2015-17*', under which authorities were allocated one million euros annually to counter forced marriage and honour-related violence (US Department of State, 2016 (a)). Measures include educating communities in which forced marriage and marital captivity is known to occur and training for healthcare professionals, aid workers and schools about forced marriage (The Government of the Netherlands, undated (a)). The campaign 'Marrying against your will' is also repeated every year and seeks to inform young people about where they can go to get advice and help (Government of the Netherlands, 2016). The Integration and Society Knowledge Platform supports and advises municipalities and neighborhood social support teams on ways of preventing, reporting and combating forced marriage (Government of the Netherlands, 2016). Free training courses have also been developed for people working in education with young people to identify and act on signs of forced marriage, abandonment in the country of origin, and honour-related acts of violence (Government of the Netherlands, 2016).

There is no information to suggest that harmful practices against widows is an issue in the four countries of the Netherlands.

### **c) Household responsibilities**

Parents who are married or in a registered partnership automatically acquire joint responsibility for the children born to them, or which they adopt, during their marriage (The Government of the Netherlands, n.d. (b)). In other cases, parents have to report to the court that they intend to conduct parental responsibility (The Government of the Netherlands, n.d. (b)).

The Lesbian Co-Parents Act (*Wet lesbisch ouderschap*) was passed by the Senate on 19 November 2013 (The Government of the Netherlands, undated (b)). As of April 2014, the female partner of the mother automatically acquires the legal status of parent (Government of the Netherlands, undated (c)).

### **d) Divorce**

Women have the same rights as men to initiate and finalize divorce under the Dutch Civil Code, a divorce between spouses is granted at the request of one of the spouses or at their joint request (Civil Code, 1992 as amended). Women have the same rights and responsibilities with regard to their children after the dissolution of the marriage (Civil Code, 1992 as amended).

In St Maartens, with effect from May 2013, the law regarding joint responsibility for minor children following divorce has been amended in response to a ruling by the Supreme Court (Government of the Netherlands, 2014) Article 251 now states that after the dissolution of a marriage other than through death, or following a judicial separation, a parent can apply to the court to establish an arrangement for the exercise of joint responsibility (Government of the Netherlands, 2014). In the event of conflict between parents regarding joint responsibility an application can be made by each of them to the court of first instance, which will be decided upon in the best interests of the child. With regards to divorce, under the new Civil Code of St Maartens, it is now possible for couples who have not separated to obtain a divorce at the application of either spouse or both (Government of the Netherlands, 2014).

There are no restrictions on married or unmarried Dutch women's rights to choose their place of residence in the country.

The Netherlands Institute for Human Rights has observed that marital captivity, or the impossibility of one of the spouses – most commonly the wife – to terminate the marriage, is an increasing problem in the country (Netherlands Institute for Human Rights, 2016). The same institute has noted that Dutch courts do not have the legal authority to dissolve religious marriages and that while the spouse in captivity may request the court to order the husband to cooperate in the dissolution of the marriage, the threshold to establish coercion under criminal law is very high (Netherlands Institute for Human Rights, 2016). This is especially problematic in the case of marital captivity: often, the stringent requirements for the situation to constitute coercion have not been met in courts (Netherlands Institute for Human Rights, 2016).

### **e) Inheritance**

Women have the same right as men to inherit land and non-land assets, both as daughters and as surviving spouses (Civil Code, 1992, as amended). For informal relationships, the surviving partner has no rights of inheritance in the case of intestate succession (Government of the Netherlands, 2015). The surviving spouse is protected from disinheritance under the Civil Code, which also provides women with the same rights as men to write a will (Civil Code, 1992, as amended).

There is no information to suggest that property dispossession/grabbing is an issue in the Netherlands. There are no reports that indicate that there are customary, traditional or religious laws that promote discriminatory inheritance practices towards women and girls in the Netherlands.

## **2. Restricted Physical integrity**

### **a) Violence against women**

The Netherlands ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) on 18 November 2015. The Convention entered into effect on 1 November 2016 (Government of the Netherlands, 2017). While the Convention will also apply to the Netherlands in the Caribbean, Government-commissioner research had made it clear that drastic measures are necessary for the implementation of the Convention in the Caribbean part of the Netherlands (European Network of Legal Experts, 2015). Because of this it

has been decided that implementation in the Caribbean part will be postponed (European Network of Legal Experts, 2015).

Since 2002, an integrated policy approach to combat all forms of interpersonal violence has been pursued nationwide (Government of the Netherlands, 2014). The current government policy approach to combatting domestic violence encompasses all forms of violence, including female genital mutilation, honour-related violence and forced marriage (Government of the Netherlands, 2014). The Ministry of Health, Welfare and Sport coordinates a government-wide approach on violence against women, together with the Ministry of Security and Justice, the Ministry of Education, Culture and Science, and the Ministry of Social Affairs and Employment (Government of the Netherlands, 2014).

Since 1 January 2015, under the Social Support Act, municipalities have assumed responsibility for combating domestic violence and child abuse. This includes through developing and executing their own policies on preventative measures and the provisions of services to victims of violence, including domestic abuse (Social Support Act, 2015). According to the Netherlands Institute for Human Rights, as a consequence, the shift from national to municipal level responsibility that the 2015 Social Care Act brought about, the access to and availability of services for victims of domestic violence have suffered, including in terms of extensive periods of waiting to access support services which may, in turn, puts them at further risk of intimate partner violence (Netherlands Institute for Human Rights, 2016). In addition, specialist care provided to victims under the new system has been criticized as insufficient under the new system of municipal responsibility for social services (Netherlands Institute for Human Rights, 2016).

## **b) Domestic violence**

There is no specific law criminalising domestic violence in the Netherlands, although domestic violence is covered by and punishable under general provisions of criminal law, including common assault, causing grievous bodily harm, manslaughter, murder, rape, sexual assault and stalking. According to Drost, van der Kooij and Lünemann, domestic violence under the Dutch regulatory framework has been seen to include any and all types of violence that are committed in the private sphere and includes intimate partner violence, but also child abuse, abuse and neglect of the elderly and honour-based violence (Drost, van der Kooij and Lünemann, 2016). Intimate partner violence is an aggravated circumstance within the context of common assault and grievous bodily harm (Drost, van der Kooij and Lünemann, 2016).

There are no special criminal procedures that apply in cases of domestic violence, although a directive on domestic violence and honour-related violence (2010) establishes rules concerning the investigation and prosecution of domestic and honour-related violence and formulates pre-conditions on local cooperation between the different actors involved, including police and prosecution (Drost, van der Kooij and Lünemann, 2016). Instances of domestic violence can be prosecuted without the victim having to lodge a complaint (Drost, van der Kooij and Lünemann, 2016). Only in cases of stalking is a formal complaint needed (Drost, van der Kooij and Lünemann, 2016).

In 2009, the Temporary Domestic Exclusion Order Act entered into force. Under the Act, perpetrators of domestic violence may be excluded temporarily from their homes so that the victims may continue to live there (Temporary Domestic Exclusion Act, 2009).

On 1 July 2013, the Mandatory Reporting Code (Domestic Violence and Child Abuse) Act came into force. Under this legislation, organizations in various sectors, including the healthcare and youth care sectors, are required to have a code of practice setting out the steps to be taken when a professional identifies signs of domestic violence or child abuse.

In 2016, there were 26 support centres for domestic violence and child abuse helping victims of domestic violence and child abuse, covering the whole country. They can be reached 24 hours a day, 7 days a week, free of charge (Veilig Thuis, n.d.).

Dutch policy measures to combat domestic violence are gender-neutral (Government of the Netherlands, 2014). Following criticism by the UN Committee on Elimination Against Women in 2010, a gender analysis to gain a clearer understanding of the degree to which the policy approach to domestic violence is gender-sensitive of this took place in 2013 (Government of the Netherlands, 2014). The findings of this analysis, released in 2014, found that there was an apparent reluctance on the part of authorities to underscore the relevance of gender-related factors, and too little is known about the role played by gender in partner violence (Government of the Netherlands, 2014). It issued several recommendations relating to the government's role, monitoring and research, awareness-raising, adjustment of policy and instruments and the role of the municipal authorities (Government of the Netherlands, 2014). A follow-up to the gender-scan was planned for 2016, involving the municipalities and the reporting points for domestic violence (Government of the Netherlands, 2015).

In 2016, the Committee on Elimination of Discrimination against Women raised concerns over the fact that while perpetrators of domestic violence in the Netherlands have access to free legal aid, access for victims of domestic violence is only available in exceptional circumstances (CEDAW Committee, 2014).

A new Criminal Code for Aruba was approved by parliament on 18 April 2012 and adopted by the Government of Aruba on 27 April 2012 (Government of the Netherlands, 2014). The Code entered into force in February 2014 (Government of the Netherlands, 2014). Under the Code any person who commits common assault, serious assault, premeditated assault, assault intentionally inflicting serious bodily injury on another person, or assault with the use of weapons is liable to a term of imprisonment or fine (Government of the Netherlands, 2014). The term of imprisonment increases by one-third if the assault was committed against the spouse or partner (Government of the Netherlands, 2014). Someone who has been convicted of stalking is liable to a term of imprisonment or a fine (Government of the Netherlands, 2014)- A new addition to the Criminal Code is also the court's power to impose an additional penalty on a person found guilty of stalking or assault, in the form of an order barring him or her from entering a particular area (Government of the Netherlands, 2014).

Under Curaçao's revised Criminal Code, where serious assault is committed with premeditation or serious bodily injury is intentionally caused to another person, the maximum sentence may be increased by a third if the victim of the offence belongs to certain categories of people such as the

offender's mother, father, spouse or partner, a child for whom he or she bears parental responsibility or a child whom he or she is caring for and raising as a member of his family (Government of the Netherlands, 2014). As an additional sentence, the court may impose a restraining order on him barring him from entering certain parts of the island (*gebiedsverbod*) (Government of the Netherlands, 2014).

A National Plan of Action for Combating Child Abuse and Domestic Violence was submitted to the Government of Curaçao in December 2015, covering the next ten years (Government of the Netherlands, 2014). The Plan consists of a strategy and a 'guide' listing numerous recommendations for actions to be taken by the government and stakeholders (Government of the Netherlands, 2016). Work has started on planning the implementation of the recommended actions which will take place over the next few years (Government of the Netherlands, 2016).

For St Maartens, under the current Criminal Code, if the victim of domestic abuse falls within the definition of the abuser's 'spouse', the law treats this as an aggravating factor (Government of the Netherlands, 2014). The Criminal Code allows a temporary restraining order to be imposed on suspects and defendants in domestic violence cases, even if the public prosecutor decides not to proceed any further with prosecution (Government of the Netherlands, 2014). Under the new Criminal Code, adopted on 13 December 2012 but not yet in force, the definition of a 'victim of domestic abuse' has been extended to include persons living in a variety of domestic circumstances, for instance the perpetrator's partner or companion (Government of the Netherlands, 2014).

St Eustatius has a special government department to which women who are victims of violence can apply for help (Government of the Netherlands, 2014). Starting in 2014, this Public Body will be devising specific policy on domestic violence together with stakeholders (Government of the Netherlands, 2014).

### c) Rape

The law in all parts of the Kingdom of the Netherlands criminalises rape, including spousal rape (US Department of State, 2016).

The Dutch Criminal Code defines rape as compelling a person into allowing an act comprising or including sexual penetration of the body, by an act of violence, threat of violence or threat (Criminal Code, 1881, as amended). Rape is a felony, punishable by imprisonment of up to 12 years or a fine (Criminal Code, 1881, as amended). The Criminal Code considers the issue of giving consent: when somebody is unable to give consent due to unconsciousness, disorders or other reasons, sexual contact is considered to be rape (in the case of penetration) or assault (Criminal Code, 1881, as amended).

### d) Sexual harassment

The Dutch Civil Code, the General Equal Treatment Act and the Act on Equal Treatment between Men and Women penalise acts of sexual harassment. Sexual harassment is defined as any form of verbal, non-verbal or physical conduct of a sexual nature, which has the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or

offensive environment (FEMM Committee, 2015). In addition to employment, sexual harassment is expressly prohibited in the areas of the provision of goods and services, including vocational training and primary and secondary education, and in the field of social protection (FEMM Committee, 2015).

The General Equal Treatment Act and the Act on Equal Treatment between men and women do not contain any effective remedies and sanctions. A victim, who wants to receive some kind of compensation or wants the sexual harassment to stop, needs to rely on general civil and administrative law procedures (Numhauser-Henning and Laulom, 2011). Legal action against clients/colleagues is possible on the basis of general civil tort law (Numhauser-Henning and Laulom, 2011). On that basis, the victim may claim damages or an injunction to stop the sexual harassment (Numhauser-Henning and Laulom, 2011).

Complaints against employers who fail to provide sufficient protection against sexual harassment may be submitted to the Netherlands Institute for Human Rights (US Department of State, 2015). Victims of sexual assault in the workplace must report the incidents to police as criminal offenses (US Department of State, 2015).

The Curacao government has a policy against sexual harassment and a procedure to report violations (US Department of State, 2016). Sexual harassment is also illegal in Sint Maarten (US Department of State, 2016). Similarly, Aruba has a law explicitly forbidding sexual harassment in the workplace (US Department of State, 2016).

#### **e) Female genital mutilation**

In the Netherlands, female genital mutilation (FGM) is punishable as a form of child abuse (Pharos, undated). On 1 July 2013, the Act to extend the scope for criminal prosecution in cases of female genital mutilation came into force (Pharos, n.d.). The Act extended the jurisdiction so that incidences of FGM performed abroad are also punishable in the Netherlands in cases where the victim is a Dutch citizen or has a permanent place of residence in the Netherlands (Pharos, n.d.). This also applies when the offender is a foreign national and/or is not a resident of the Netherlands (Pharos, n.d.). The maximum penalty for FGM is 12 years in prison (Pharos, n.d.).

In case parents perform the circumcision themselves on their own daughter or on a child over whom they exercise parental authority or whom they care for or raise, the imprisonment term may be increased by one third (Criminal Code, 1881, as amended). They are also punishable if they allow and/or support the procedure to be performed, order it, pay for it, provide the means for it and/or assist the person performing the act during the circumcision. Such acts are considered soliciting, abetting or co-perpetration under Dutch criminal law (Criminal Code, 1881, as amended).

Following the adoption of the law on Mandatory reporting of domestic violence and child abuse in 2013, organizations and self-employed professionals, including doctors, teachers and employees of youth institutions, are required to have a reporting code to respond appropriately to signs of violence, including FGM (Pharos, n.d.). When confronted with a suspicion of an impending or performed FGM, professionals should act according to the roadmap pertaining to their own reporting code (Government of the Netherlands, n.d. (d)). The Dutch government has drawn up an official document to support parents who may face external pressure to perform FGM on their daughter (Government

of the Netherlands, n.d. (d)). This document is known as the Declaration against Female Genital Mutilation (FGM) and is available at children's health care centres and school doctors (Government of the Netherlands, n.d. (d)).

The government also subsidizes a public campaign against female genital mutilation (FEMM Committee, 2015).

#### **f) Abortion**

Under the Criminal Code, abortion is not an offence if it is carried out by a physician in a hospital or clinic which is authorized to provide such treatment under the Termination of Pregnancy Act (Criminal Code, 1881, as amended) The Law on the Termination of Pregnancy does not set out any reasons or criteria for terminating a pregnancy (Law on the Termination of Pregnancy, 1981).

The Termination of Pregnancy Act mandates a reflection period before which an abortion can be carried out: "not earlier than the sixth day after the woman has consulted the physician and on that occasion discussed her intention with him." (Law on the Termination of Pregnancy, 1981). This consultation period begins when the woman's regular physician or an active specialist or family doctor of the woman's residence has referred her to a hospital or clinic; the physician must inform the woman whether he will provide her with the assistance at the latest within five days after the consultation and usually at the latest within three days (Law on the Termination of Pregnancy, 1981). In addition to consulting with the woman in person, the operating doctor must "advise her on the different options available" and "inform her of the medical risks"; minors (persons under 18 years of age) must have parental consent (Global Research Centre, 2015).

Under Dutch legislation a pregnancy may only be terminated until such time as the foetus might reasonably be presumed capable of surviving independently of the mother (Government of the Netherlands, 2011). Expert opinion currently considers the foetus to be viable at least 24 weeks, although according to reports, most doctors will not perform the procedure after 22 weeks into the pregnancy because of the margin of error of ultrasound scans and to be sure they remain within the statutory time limit (Government of the Netherlands, 2011). In cases in which the woman is seeking an abortion for medical reasons, the pregnancy may be terminated at the 24<sup>th</sup> week at the latest, although there are a very small number of specifically described medical situations in which more advanced pregnancies may be terminated (Government of the Netherlands, 2011). A new regulation clarifying the due care criteria and medical and legal considerations to be taken into account in performing late-term abortions entered into force on 1 February 2016 (Government of the Netherlands, 2015 (b)).

Under current criminal law in Saint Maarten, a person who publicly displays materials or services that can be used to disrupt pregnancy, will be punished with imprisonment not exceeding three months or a fine not exceeding 300 guilders (Government of the Netherlands, 2014). In addition, any person, who intentionally treats a pregnant woman with the expectation of disturbing or disrupting her pregnancy, will be punished with imprisonment not exceeding three years or a fine not exceeding 3 000 guilders (Government of the Netherlands, 2014). If motivated by profit or as a criminal act this penalty may be increased by a third. Furthermore, if the crime is committed in the capacity of the offender's



profession he/she may be barred from future practice (Government of the Netherlands, 2014). According to Government reporting to the Committee on Elimination of Discrimination against Women, this legislation was being revised in 2015 (Government of the Netherlands, 2014).

### *More*

The Netherlands is a source, destination, and transit country for men, women, and children from the Netherlands, Eastern Europe, Africa, and South and East Asia subjected to sex trafficking and forced labour, such as inland shipping, offshore oil exploration, agriculture, horticulture, catering, food processing, domestic servitude, and forced criminal activity (US Department of State, 2016 (b)). Vulnerable populations include Dutch girls enticed by young male traffickers (known as lover-boys, who establish sham love relationships with vulnerable girls before intimidating them into sexual exploitation), unaccompanied children seeking asylum, women dependent on residency status obtained through fraudulent or forced marriages, domestic workers of foreign diplomats, Roma, and vulnerable women and men recruited in Eastern Europe, Africa, and Asia (US Department of State, 2016 (b)). The government has continued implementing the national referral mechanism plan created in 2014, including creating guidelines and training for identifying and referring victims to care, and setting standard operating procedures for key ministries (US Department of State, 2016 (b)). There is a government-wide taskforce that coordinates policy (US Department of State, 2016 (b)). National legislation requires law enforcement officers to refer victims to protection services. The Government continues to run awareness campaigns aimed at educating vulnerable populations and businesses, and the independent anti-trafficking rapporteur monitors government efforts (US Department of State, 2016 (b)).

Victims of domestic or honour-related violence may be eligible for a humanitarian residence permit and victims living in the Netherlands illegally may apply for a temporary humanitarian residence permit (Government of the Netherlands, 2017 (a)). If the threat of violence is still present after a year, the permit may be converted into a non-temporary residence permit (Government of the Netherlands, 2017 (a)). If a victim possesses a residence permit for residence with a partner and the relationship is severed because of domestic abuse or the threat of honour-related violence, the victim is eligible for a non-temporary humanitarian residence permit (Government of the Netherlands, 2017 (a)).

Honour-related violence is treated as “regular violence” for the purposes of prosecution, and there is no separate offense category or penalty for this type of violence (US Department of State, 2015). The National Expertise Centre for Honour-Related Violence supports the police, making it possible to act safely in response to suspicions of honour-based violence (Government of the Netherlands, 2016). In addition, the Netherlands has a National Platform against honour-based violence since 2004, through which it aims to exchange information among European countries (European Parliament, 2015).

## **3. Restricted Access to productive and financial resources**

### **a) Secure access to land and assets**

Under the Civil Code, Dutch women enjoy the same rights as men to own, use and make-decisions over land and non-land assets and use as collateral (Civil Code, 1992, as amended). Property rights for

married couples is governed by the Civil Code and a new marital property law that entered into force on 1 January 2012, which establish that in the absence of a nuptial agreement, marital property regime is one of community property (Civil Code, 1992, as amended). The marital community property regime includes all assets of the spouses that are present at the start of the marital community of property and, as long as the marital community of property has not been dissolved, that are acquired afterwards (Civil Code, 1992, as amended). The marital property regime prescribes the same rights to own and use assets, and provides for an equal share for both spouses in case of dissolution of the marriage (Civil Code, 1992, as amended).

### **b) Secure access to formal financial resources**

The General Equal Treatment Act prohibits discrimination on the bases of gender in the access to financial resources. There is no information to suggest that restrictions on women's access to formal financial resources is an issue in the countries of the kingdom of the Netherlands.

### **c) Workplace rights**

The Netherlands has ratified ILO Conventions 100 (equal remuneration), 111 (discrimination in employment and occupation), 156 (workers with family responsibilities) and 183 (revision of maternity protection). The Netherlands has not ratified ILO Convention 189 (domestic workers) despite recommendations from international human rights mechanisms to do so (CEDAW Committee, 2016).

The Equal Treatment Act forbids discrimination in the fields of employment, liberal professions, and goods and services, in associations of employers, employees and in professional organisations, and in the area of social protection, including social security and social advantages. With regards to employment, the Equal Treatment Act specifies that discrimination is prohibited in public advertising of employment and procedures leading to the filling of vacancies; job placement; the commencement or termination of an employment relationship; the appointment and dismissal of civil servants; terms and conditions of employment; permitting staff to receive education or training during or prior to employment; promotion; and working conditions (Equal Treatment Act, section 5 (1)). Similarly, the Equal Treatment of Men and Women Act prohibits sex discrimination in the field of employment and pensions, both in the private and in the public sector.

Under the Civil Code, employers are not allowed to make a distinction between women and men with respect to employment conditions. This includes equal pay for equal work or work of equal value (Civil Code, 1992, Article 7: 646 (1) as amended). Furthermore, the Equal Treatment Act mandates that when comparing the pay of a female and male employee, a comparison must be made with an employee of the other sex who does equal work or work of equal value. Notwithstanding, according to reporting by the Netherlands Institute for Human Rights, women still get paid less than men for the same work (Netherlands Institute for Human Rights, 2017). This may be partly the result of the application of remuneration criteria not directly related to the employee's performance on the work floor, such as previous salary and most recently earned pay and wage negotiations (Netherlands Institute for Human Rights, 2017). Research by the Institute for Human Rights concluded that when employers use these factors in determining salary this negatively affects women twice as much as men (Netherlands Institute for Human Rights, 2017).

Women have the same rights as men to freely choose their profession, and there are no restrictions on working the same hours as men.

Under the Work and Care Act, women have the right to 16 weeks of paid maternity leave. It is mandatory to take the whole period of leave (Work and Care Act, Art. 3:1). Maternity leave is paid at 100% of earnings up to a ceiling equivalent to the maximum daily payment for sickness benefit (totalling EUR 202.17 in 2015) and covered by the general unemployment fund, which is financed by employers (Den Dulk, 2016). According to reporting by the Netherlands Institute for Human Rights, women continue to be discriminated in accessing the labour market and the workplace due to pregnancy and motherhood (Netherlands Institute for Human Rights, 2016).

Since January 2015, paternity leave can be taken for two working days immediately around the birth of a child and an additional three days (out of parental leave) at a later stage (Work and Care Act, Art. 4:2; den Dulk, 2016). The two days are paid by the employer at 100% of earnings, with no ceiling on payments; the three days are unpaid leave (Work and Care Act, Arts. 4:2 and 4:7).

Unpaid parental leave may be taken up to 26 weeks (Work and Care Act, 2011). The total duration of the leave (26 weeks) applies to both the public and the private sector. Parental leave is an individual, non-transferable entitlement (den Dulk, 2016). Leave has normally to be taken part-time; full-time is only possible when the employer agrees (den Dulk, 2016). Between 2009 and 2014 parents were entitled to a parental leave tax credit of 50% of the statutory minimum wage, although since 2014 this entitlement no longer exists (den Dulk, 2016).

There are no legal provisions ensuring that the employment rights relating to the employment contract are protected during the pregnancy and maternity leave (European Network of Legal Experts, 2015). There is no explicit legal right to return to the same or a comparable job after having taken parental leave (nor is this the case after having taken pregnancy/maternity leave) (European Network of Legal Experts, 2015).

In October 2012, the Equal Treatment Commission was incorporated into the Netherlands Institute for Human Rights (NIHR) (European Network of Legal Experts, 2015). The NIHR's mandate encompasses, amongst other, conducting investigations and dealing with complaints about discrimination previously handled by the Equal Treatment Commission (Government of the Netherlands, 2016). Any employee who feels that she or he has been discriminated against can submit a request for investigation to the NIHR (Government of the Netherlands, 2016). The NIHR will then investigate the complaint and evaluate whether the actions did in fact contravene equal treatment legislation (Government of the Netherlands, 2016). The NIHR's complaints procedure is publicly accessible (Government of the Netherlands, 2016). Representation is not compulsory and there are no costs associated with the procedure (Government of the Netherlands, 2016). The concluding observations of the NIHR are non-binding (Government of the Netherlands, 2016).

While it is not a legal requirement for companies to report on how they pay women and men, various initiatives that aim at reducing the differences in pay between women and men are in place in the Netherlands (Government of the Netherlands, 2016). An important initiative is the website [www.gelijkloon.nl](http://www.gelijkloon.nl) which makes it possible to compare wages. In addition, the NIHR has developed the

equal pay Quicksan which can be found on the website on recruitment: [www.wervingenselectiegids.nl](http://www.wervingenselectiegids.nl).

In Curacao, on 6 April 2012 the maternity leave ordinance was amended to conform with international standards, particularly the revised version of the Maternity Protection Convention number 103 and ILO Convention number 183 (Government of the Netherlands, 2014). Changes included a ban on discrimination on the part of the employer may in terms of employment contracts, as regards the provision of instructions, benefits, and continuation or termination of the contract (Government of the Netherlands, 2014). A ban on requesting job applicants to undergo pregnancy test was also introduced (Government of the Netherlands, 2014). Pregnancy and maternity leave was increased from 12 to 14 weeks. Lastly, under the revised maternity leave ordinance, employers are prohibited from terminating employment during pregnancy for reasons related to the pregnancy or during maternity leave (Government of the Netherlands, 2014).

### *More*

On 1 January 2013, an amendment to the rules relating to the management and supervisory boards of public and private limited companies entered into force (Government of the Netherlands, 2016). This amendment sets out minimum targets of 30% women and 30% men on the management and supervisory boards of large companies (Government of the Netherlands, 2016) Companies that do not meet these targets are required to account in their annual report for their failure to comply and to explain what course of action they plan to take to remedy the situation ('comply or explain') (Government of the Netherlands, 2016). The shareholders' meeting is responsible for approving the company's reasons and actions, but there are no sanctions (Government of the Netherlands, 2016).

## **4. Restricted Civil liberties**

The main items of legislation in the Netherlands banning discrimination against women are Article 1 of the Constitution and the General Equal Treatment Act and the Equal Treatment (Men and Women) Act (Government of the Netherlands, 2014). Multiple discrimination and intersectional discrimination are not explicitly addressed in the Constitution or in any other national legislation, and there are no pending proposals in this regard (European Network of Legal Experts, 2015).

### **a) Citizenship rights**

Under constitutional law, nationality is the responsibility of the Kingdom of the Netherlands. The Netherlands Nationality Act does not contain any provisions that discriminate against women with respect to the acquisition or loss of Dutch nationality. Additionally, woman and men have equal rights in regard to passing their nationality on to their children and spouses (Nationality Act, 2010).

Under the Passport Act, women also have the same rights as men to apply for a passport and to acquire passports and other travel documents for their minor children (Passport Act, 1991, as amended).

The Constitution provides for the right of all citizens to travel outside of their country and to return (Constitution of the Kingdom of the Netherlands, 2008).

Every child born in the Netherlands must be registered at the municipal population affairs office within three days of its birth (Government of the Netherlands, undated (e)). There is no information to suggest that birth registration or women's right to apply for identity cards or passports for themselves and/or for their children is an issue in the Netherlands.

### **b) Voting**

Under the Dutch Constitution, every Dutch national have an equal right to elect the members of the general representative bodies and to stand for election as a member of those bodies (Constitution of the Kingdom of the Netherlands, 2008).

Under the Constitution of Curaçao all Dutch nationals may be appointed on an equal footing to positions in public service (Constitution of Curacao, 2010), Universal suffrage was introduced in Curaçao in 1948 (Government of the Netherlands 2014). Similarly, women have been able to both vote and run for office on St Maarten since securing this right in 1948 (Government of the Netherlands, 2014).

There are no legal requirements to provide measures to ensure that women understand the right to vote and how to exercise it. There is no information to indicate that there are customary, traditional or religious practices that discriminate against women's legal right to vote in the four countries of the Kingdom of the Netherlands.

### **c) Political voice**

Women have the same rights as men to hold public and political office in all four countries of the Kingdom. There are no quotas for elections lists for political parties and no reserved seats for women in Parliament.

### **d) Access to justice**

The Constitution of the Kingdom of the Netherlands provides for equal treatment of men and women in equal circumstances, and prohibits discrimination on grounds of religion, belief, political opinion, race or sex or on any other grounds (Constitution of the Kingdom of the Netherlands, 2008)

Women have the same legal capacity as men to sue and be sued as men. Women's testimony carries the same evidentiary weight in court as men's in all types of court cases.

There is no legislation or measures in place that specifically seeks to protect women from violence in public and political life.

There is no legislation that specifically addresses violence or harassment of Dutch human rights defenders, however, the Netherlands supports the project Shelter City which facilitates the stay in the Netherlands of human rights defenders who are under threat in their own country in the Netherlands for three months (Government of the Netherlands, undated (e)).

The NIHR (Netherlands Institute for Human Rights) is the main officially designated equality body in the Netherlands (Amended Bill on the Netherlands Institute for Human Rights Act, 2011). The NIHR covers all grounds of discrimination: race, sex, age, religion, belief, sexual orientation, nationality, handicap or chronic illness, marital status, working hours, the temporary character of the employment agreement and political beliefs (European Network of Legal Experts, 2015). The Institute has the power to receive and investigate complaints from individuals and organisations relating to discrimination, to give advice to organisations that want to revise their policies, to monitor developments including in relation to international human rights commitments and to advise the Government with respect to the implementation of anti-discrimination legislation and/or any necessary revision of this legislation (Amended Bill on the Netherlands Institute for Human Rights Act, 2011). Human rights education is also a statutory responsibility of the NIHR (Amended Bill on the Netherlands Institute for Human Rights Act, 2011).

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