

NETHERLANDS

The Constitution of the Kingdom of the Netherlands specifically bans gender-based discrimination.¹

1. Discriminatory family code

The **legal age for marriage** for men and women is 18 without consent, and 16 with parental consent.² Same-sex couples have the right to marry under the Civil Code.³ Upon registration, de facto partnerships have almost identical rights as married couples. Cohabitation is not regulated by law.⁴

Religious marriage ceremonies must be registered first with a Registrar of Civil Status.⁵ A legislative proposal to modify the Civil Code was sent to the Senate on March 2014. It seeks to reinforce the minimum age for marriage at 18 and making it possible to nullify forced marriages.⁶

The Civil Code provides that women and men have equal **parental authority** over children during marriage.⁷ Spouses have a duty towards each other to care for and raise the minor children belonging to their family and to bear the costs of such care and upbringing.⁸ The Civil Code indicates that both women and men can be the head of the household. The law establishes that the costs of the household, including the costs of caring for and raising the children, are to be paid from the income which belongs to both spouses jointly.⁹

The law provides that women and men have equal decision-making authority over children after **divorce**. The Civil Code established that when the marriage has been dissolved for another reason than the death of one of the spouses or a legal separation, the parents who had joint authority over their minor children during that marriage, will keep having joint authority over these children after the dissolution of that marriage.¹⁰ Divorced couples with children are legally obligated to draw up a parenting plan. This compulsory plan contains agreements about the children including how the parents will share responsibility for the care and upbringing of their children and the manner in which expenses related to the child or children are to be shared, and the amount of maintenance that is to be paid for the children.¹¹ The last CEDAW report drew attention to the fact that this

¹ Constitution of the Kingdom of the Netherlands, 2002. Article 1

² Civil Code Book 1, Section 1.5.1, Article 1:31; United Nations Statistics Division (2008) Minimum Legal Age for Marriage Without Consent [database] <http://data.un.org/Data.aspx?d=GenderStat&f=inID:19> (accessed 25/03/2014)

³ Civil Code Book 1, Section 1.5.1, Article 1:30.2

⁴ Government of the Netherlands' Website. <http://www.government.nl/issues/family-law/marriage-registered-partnership-and-cohabitation-agreements> (accessed 09/04/2014)

⁵ Book 1, Section 1.14.1, Article 1:68

⁶ Dutch Senate. http://www.eerstekamer.nl/behandeling/20140325/gewijzigd_voorstel_van_wet/f=-/vjihel3ztoz.pdf (accessed 30/04/2014)

⁷ Book 1, Section 1.14.1, Article 1:245.3

⁸ Civil Code, Book I, Title 1.6, Art. 1:82

⁹ Civil Code, Book I, Title 1.6, Art. 1:84

¹⁰ Civil Code, Book I, Section 1.14.1, Art. 1:251

¹¹ Government of the Netherlands' Website. <http://www.government.nl/issues/family-law/divorce-and-children> (accessed 25/03/2014)

requirement puts additional constraints on victims of domestic violence trying to initiate divorce proceedings to leave an abusing partner. The committee urged the Netherlands not to use the joint plan for parenthood as a legal precondition for starting divorce proceedings and in no case to impose it on women victims of domestic violence.¹²

The Civil Code provides women equal **inheritance** rights as wives and as daughters.¹³ There is no sign of customary or religious governing inheritance laws, though reports suggest that women migrants may face more challenges in claiming their rights.¹⁴

More

Both women and men have equal rights to **initiate divorce** as established in the Civil Code.¹⁵

The 2010 CEDAW report drew attention on the fact that female divorcees, as well as single mothers, are a particularly vulnerable group in the Netherlands, in the sense that they are more likely to fall into poverty after the dissolution of the marriage.¹⁶

Women spend on average two hours more per day on **household work** than men.

2. Restricted physical integrity

The Ministry of Education, Culture and Science has put in place different mechanisms to lessen the influence of gender stereotypes on gender-based violence. The goal is to teach young people to stand up for themselves in the area of sexuality and relationships and to set their own limits and respect those of other people. These actions include using social media to raise awareness about violence and producing learning packages for sex education and media literacy classes in secondary schools.¹⁷

There is no specific law criminalising **domestic violence**. However, it is criminalised in the Criminal Code under different articles not specific to domestic violence.¹⁸ The legal provisions that address domestic violence do not specify violence against women.¹⁹ The gender neutral clauses in the national framework for domestic violence was criticized in the last CEDAW report.²⁰

In 2009 the Temporary Domestic Exclusion Order Act was passed, under which an offender can be initially excluded from the home for ten days through a domestic exclusion order. This initial period can be extended to 28 days if the risk of violence persists. The offender, the victim and any children involved in the incident are offered social assistance during the time of the domestic exclusion order.²¹ An interdepartmental project was put in place under the coordination of the Ministry of Justice, between 2002 and 2007, as part of the Netherlands' Public Safety Programme. The policy document called *Privé Geweld - Publieke Zaak* ('Private Violence - Public Issue') contains fifty

¹² CEDAW/C/NLD/CO/5, pp. 6-7

¹³ Article 4:10

¹⁴ Iris Sportel (2013) pp.1095-6 and 1108. <http://opo.iisj.net/index.php/osls/article/viewFile/240/333>

¹⁵ Book I, Section 1.9.1, Art. 1.9.2

¹⁶ CEDAW/C/NLD/CO/5 (2010) p. 11

¹⁷ Government of the Netherlands' Website <http://www.government.nl/issues/gender-equality/safety-of-girls-and-women> (accessed 26/03/2014)

¹⁸ Articles 67 (Court appointment), 138 (Crimes against public order), 242-243 and 246 (Crimes against morality), 255 and 257 (Abandonment/neglect of dependents), 282 and 285-285b (Crimes against personal freedom/liberty), 300-304 (Maltreatment), 350 0 (Destruction or damage).

¹⁹ Women Against Violence Europe.(2012), p.191

²⁰ CEDAW (2010), p. 6

²¹ Government of the Netherlands Website

concrete measures designed to overcome it.²² In January 2003, the Board of Police Commissioners put forward a national action plan on domestic violence, called 'Huiselijk geweld en de politietaak', with the objective of aiding police departments to develop effective domestic violence mechanisms and to facilitate the national registration of domestic violence cases.

There are 96 women's shelters in the Netherlands with the capacity of lodging 1,608 people. Female victims and their children can stay on average three to six months at the shelters, although if needed the period can be extended. Also, the Information and Help on Domestic Violence is the national hotline for domestic violence²³ In terms of legal advice for victims, Victims Support Netherlands (VSN) is a national organization with 75 offices throughout the country that provides support and legal advice, such as providing information about court proceedings and assisting the victim in court and with the procedures regarding protection orders.²⁴ The last CEDAW report stated that while perpetrators of domestic violence have access to free legal aid, victims of domestic violence can avail themselves of it only in exceptional circumstances.²⁵

In 2002 an inter-ministerial working group in the Netherlands Antilles and Aruba for the collection of data on domestic violence and on the planned adoption of temporary restraining legislation. However, the 2010 CEDAW report pointed out that police officers in Aruba have not yet received training in dealing with domestic violence.²⁶ In January 2010, the delegation of Netherlands Antilles argued that further measures are being taken, such as mandatory special therapy for perpetrators and after-care services for victims.²⁷

The Netherlands collects information about domestic violence on a regular basis: more than 40% of the Dutch population²⁸ have experienced domestic violence at some point in their lives and 80% of the time the perpetrator is male. The most recent data, collected by the police through a special registration procedure for domestic violence, indicates that over 56,000 domestic crime reports are entered into the police database each year. The Ministry of Health claims that only 12% of all domestic violence cases are reported to the police, which would mean that every year there are around 500,000 domestic violence incidents. Moreover, only 36% of the cases reported to the police result in an official complaint by the victim. In 58 % of the domestic violence cases where victims file an official complaint with the police, the perpetrator was actually detained.²⁹

The Penal Code criminalizes **rape**, which is defined 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. This felony is punishable by imprisonment of up to twelve years or a fine.³⁰ Moreover, if the victim is unconscious, physically or mentally handicap, or unable to give consent or indicate

²² Ministry of Ministry of Health, Welfare and Sport 's website <http://www.huiselijkgeweld.nl/english/factsheet> (accessed 27/03/2014)

²³ Women Against Violence Europe.(2012), p.193

²⁴ The Library of Congress USA, http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205402571_text (27/03/2014)

²⁵ CEDAW (2010) p. 6

²⁶ CEDAW (2010) p. 6

²⁷ Minister of Public Health and Social Development/Minister of Education, Head of the Delegation of the Netherlands Antilles (2010) p.5

http://www2.ohchr.org/english/bodies/cedaw/statements/statement_Netherlands_Antilles.pdf

²⁸ According to the World Banks' World Development Indicators Database, the total population of the Netherlands is 16,767,705.0.

²⁹ Ministry of Ministry of Health, Welfare and Sport 's website <http://www.huiselijkgeweld.nl/english/factsheet> (accessed 27/03/2014)

³⁰ Penal Code, Article 242

resistance, the punishment is imprisonment of up to eight years or a fine.³¹ The offence is aggravated if serious bodily harm occurs as a result of the assault, in which case the imprisonment can go up to fifteen years.³² The definition of rape specifically includes marital/spousal rape but only 3% of reported cases end in arrests.³³ No indication of the perpetrator being able to escape prosecution by marrying the victim.

Initially addressed by the Working Conditions Act³⁴ (1998), **sexual harassment**, or *seksuele intimidatie*, is defined by the Civil Code and by the Equal Treatment Act³⁵ as any form of verbal, non-verbal or physical behaviour of a sexual nature of which the purpose or effect is the violation of a person's dignity, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.³⁶ Employers are liable for the well-being and care of their employees and are banned from backlashing against employees who report sexual harassment.³⁷ The protection from sexual harassment extends beyond the workplace and work hours, as established by jurisprudence.³⁸ Similarly, the Civil Code establishes that employers must evaluate the risk of sexual harassment and successively formulate a prevention programme.³⁹ Hence, most of the bigger organisations in the Netherlands have internal policies regarding sexual harassment.⁴⁰ When harassment takes place, the employer and the employee must agree on a "trust person" to provide support and advice to the victim.⁴¹

The Netherlands created the first centre for sexual harassment complaints in 1985, the Stichting Handen Thuis (Hands Off Foundation), which received over 140 formal complaints during its first year.⁴² In addition, the Netherlands has been realising studies about sexual harassment since the 1990s.⁴³ One example is The Dutch Working Conditions Survey, conducted since 2000, which takes into account sexual harassment.⁴⁴ One source stated that the Netherlands continues to conduct this sort of research on a regular basis.⁴⁵ The organisation charged with the collection of this data at least twice a year was TNO Arbeid.⁴⁶ Since 2005 a national survey (*nationale enquête arbeidsomstandigheden*) is published every year by TNO and CBS.⁴⁷ Conversely, the lack of data on sexual harassment was one of the criticisms stated in the last CEDAW report.⁴⁸

Two entities charged with the implementation of the law are the Labour Inspection/Inspectorate and The Netherlands Institute for Human Rights, formerly the Equal Treatment Commission.⁴⁹

³¹ Penal Code, Article 243

³² Penal Code, Article 248

³³ US State Department. <http://www.state.gov/j/drl/rls/hrrpt/2011/eur/186388.htm> (accessed 26/03/2014)

³⁴ Article 1.3.e

³⁵ Act of 2 March 1994

³⁶ Civil Code Book 7, Section 7.10.4.6; Equal Treatment Act (1994), Section 1a

³⁷ Book 7, Section 7.10.4.7

³⁸ European Union (2004), p.57

³⁹ Book 7, Article 7:658

⁴⁰ European Union (2004), p.37

⁴¹ The Irish Presidency of the European Union (2004) Report on Sexual Harassment in the Workplace in EU Member States. p.14

⁴² Eurofond (n.d.) <http://www.eurofound.europa.eu/emire/NETHERLANDS/SEXUALHARASSMENT-NL.htm> (accessed 26/03/2014)

⁴³ European Commission (1998), p. 98

⁴⁴ European Foundation for the Improvement of Living and Working Conditions (2007), p.13

⁴⁵ The Irish Presidency of the European Union (2004), p.15

⁴⁶ The Irish Presidency of the European Union (2004), p.92

⁴⁷ Centraal Bureau voor de Statistiek and TNO (2012)

⁴⁸ CEDAW/C/NLD/CO/5 (2010) p. 9

⁴⁹ European Union (2004), p.65 ; The Netherlands Institute for Human Rights (2012)

Several different private organizations provide support and legal advice for sexual harassment victims. For instance, the Bezemer and Kuiper training and advice Centre, specialized in detrimental behaviour at the workplace.⁵⁰ Another example is Movisie, the Netherlands Centre for social development, offering support and counselling to professional organizations, volunteer organizations and government institutions in the field of welfare, care and social development.⁵¹

Female genital mutilation is illegal in the Netherlands under child abuse laws.⁵² Since July 1st 2013 legislation is in effect that provides for more possibilities to tackle female genital mutilation by criminal law. The maximum punishment in article 284 of the Penal Code (to make a person endure something, inter alia FGM, by violence or threat) is raised from 9 months to two years imprisonment and a maximum fee of € 20 250. In several Penal Code Articles, on crimes against personal freedom, on abuse and on physical harm, FGM is included.⁵³

In 2012, around 40 % of immigrant women (from countries where FGM is traditionally practiced) had undergone FGM. That is almost 1% of the Dutch female population. The majority of these women fall within the reproductive ages. This requires from doctors and other health care workers skills to discuss this topic, proper knowledge of the relation between medical and psychosocial complaints and FGM, as well as knowledge of existing medical treatments or therapies.⁵⁴

More

Abortion is legal in the Netherlands, via the Termination of Pregnancy Act, after 16 days and up to the 24th week. Although the official deadline is the 24th week, in practice doctors stick to a time limit of 22 weeks. Also, Doctors are obliged to report late-term abortions and the termination of life of neonates to a central committee. Abortions are free of charge for Dutch nationals under the Exceptional Medical Expenses Act. Abortions may be performed only in a licensed clinic or hospital. Women are required to see a doctor before proceeding, but this may be their own general practitioner.⁵⁵

3. Son bias

The male/female **sex ratio** for the working age population is 1.01 while the sex ratio at birth is 1.05.⁵⁶ There is no evidence that **missing women** is an issue.

More

Based on 2008-2012 data, there is virtually no gender gap in terms of school enrolment in regards to primary and secondary education in The Netherlands.⁵⁷ Moreover, according to 2011-2012 data from the World Bank, females are marginally more likely to be contributing family workers than

⁵⁰ Bezemer & Kuiper

⁵¹ Movisie. <http://www.movisie.com/> (accessed 30/04/2014)

⁵² Penal Code Articles 300-304-307-308

⁵³ Dutch Senate

⁵⁴ Ministry of Ministry of Health, Welfare and Sport website. <http://www.huiselijkgeweld.nl/english/female-genital-mutilation-in-the-netherlands-prevalence-incidence-and-determinants> (accessed 27/03/2014)

⁵⁵ Government of the Netherlands Website

⁵⁶ CIA. <https://www.cia.gov/library/publications/the-world-factbook/fields/2018.html> (accessed 28/03/2014)

⁵⁷ UNICEF. http://www.unicef.org/infobycountry/netherlands_statistics.html (accessed 3/04/2014)

males, that is, to hold "self-employment jobs" as own-account workers in a market-oriented establishment operated by a related person living in the same household.⁵⁸

4. Restricted resources and assets

Dutch citizens enjoy the **right to land and non-land assets**, as established by the Civil Code.⁵⁹ Property rights for married couples are also governed by the Civil Code, which establishes either joint or separate ownership.⁶⁰ Neither customary, nor religious law govern women's access to property.

No formal restrictions were found on women's **access to financial services**. In fact, in 2011 almost as many women had an account in a formal financial institution as men. While nearly 17% of males older than 15 received a loan from a financial institution in 2010-2011, only 9% of females did.⁶¹

While no government-funded micro-credit programmes could be located, independent institutions provide credit opportunities for women entrepreneurs. One example is FORUM Institute for Multicultural Affairs, which provides financial support for women of ethnic background in the Netherlands who want to start their own business.⁶²

5. Restricted civil liberties

Access to public space and freedom of movement are protected by the Constitution.⁶³ Women can freely choose their domicile, apply for a passport and drive. Freedom of association is recognized for all citizens by the Constitution.⁶⁴ The right of assembly and demonstration is protected as well.⁶⁵

Women were granted the right to vote in 1919. There are no legislated **quotas** at a national or sub-national level to promote women's political participation. Two parties have established voluntary quotas, the Labour Party and the Green left.⁶⁶ In 2014, there are 58 women, out of 150, in the Lower House of Parliament, which represents nearly 39%. In the Upper House, out of 75 seats, 27 are occupied by women.⁶⁷

More

In 1980, The Netherlands passed the Equal Treatment Act⁶⁸, which sought to harmonize Dutch legislation with the Directive of the Council of the European Communities of 9 February 1976 on equal treatment for men and women in the **workplace**. In addition, the Civil Code protects women against discrimination in employment.⁶⁹ The Ministry of Social Affairs and Employment and the

⁵⁸ World Bank Development Indicators Database <http://databank.worldbank.org/data/views/reports/tableview.aspx> (accessed 1/04/2014)

⁵⁹ Book 3, Section 3.1.1

⁶⁰ Book 1, Section 1.6, Art. 1:90(1)

⁶¹ The total population for 2011 is 16,693,074.0; World Bank Development Indicators Database <http://databank.worldbank.org/data/views/reports/tableview.aspx> (accessed 09/04/2014)

⁶² FORUM Institute for Multicultural Affairs

⁶³ Article 15

⁶⁴ Article 8

⁶⁵ Article 9

⁶⁶ The Quota Project (n.d.)

⁶⁷ Inter-Parliamentary Union

⁶⁸ Act of 1 March 1980

⁶⁹ Sections 7:646-7:649 of the Civil Code

Institute for Human Rights are the entities charged with dealing with gender discrimination in the workplace.⁷⁰

The duration of **maternity leave** is 16 weeks and is paid at 100%.⁷¹ Fathers are entitled to two days of paid paternity leave and three days of unpaid leave.⁷² Not only does the law penalize employers who dismiss pregnant employees⁷³, but employers are required to give employees an equivalent position when they return from maternity leave.⁷⁴ Moreover, the Working Time Act established that employers are required to provide break time for nursing mothers.⁷⁵

At median earnings, the **gender pay gap** is 17% (the OECD average is 16%). Shorter careers, fewer working hours and lower earnings also contribute to relatively low pensions for women.⁷⁶

There is evidence showing that discrimination against women in the professional field is still a prevalent issue in the Netherlands. Stereotyping takes place during selection and recruitment.⁷⁷ A 2012 study carried out by the Institute for Human Rights revealed that more than 45% of working women have had unfavourable experiences with discrimination at work on the grounds of pregnancy or the early period of motherhood. The number of pregnancy discrimination cases in which the Institute issued an opinion increased sharply: the number increased by 60% in 2012 as compared to 2011. Hence, the Institute launched a website opinion poll⁷⁸ in May 2013 and more than 750 women participated. The poll revealed discriminatory practices, such as contract clauses that would terminate the contract in case of pregnancy and discriminatory comments against pregnant women. This campaign had a positive effect in terms of awareness-raising in the press, television and social media. After the poll, the Institute organised pregnancy discrimination theme hearing and afterward published several online articles.⁷⁹ Regardless of these efforts, in January 2013, The European Commission decided to refer the Netherlands to the Court of Justice of the European Union for not adequately protecting the rights of employees on maternity, adoption or parental leave related to their return to work.⁸⁰

As implemented by the Ministry of Education, Culture and Science, since December 2012, learning to show respect for sexuality and sexual diversity were introduced as attainment targets in the school curriculum in the Netherlands. Teachers receive a special training to deal with **sexuality and sexual diversity**.⁸¹ Moreover, in December 2013, the Dutch Senate approved the law protecting the identity rights of transgender persons.⁸²

⁷⁰ The Netherlands Institute for Human Rights' website. <http://www.mensenrechten.nl/mission-and-ambition> (accessed 25/03/2014)

⁷¹ Work Care Act, Art. 3; World Bank's Women, Business and the Law Database

⁷² Government of the Netherlands' Website. www.rijksoverheid.nl/onderwerpen/verlof-en-vakantie/kraamverlof (accessed 30/04/2014)

⁷³ Civil Code, Article 7:670

⁷⁴ Civil Code, Articles 670.2 and 7:667.8

⁷⁵ Sec. 4:8.1-3

⁷⁶ OECD (2012)

⁷⁷ Institute for Human Rights Annual Report (2012), p.12

⁷⁸ 'Pregnancy and work: regulated, or a hassle?'

⁷⁹ Institute for Human Rights Annual Report (2012) p. 28

⁸⁰ European Union's website. http://europa.eu/rapid/press-release_IP-13-45_en.htm (accessed 25/03/2014)

⁸¹ Government of the Netherlands' Website <http://www.government.nl/issues/gender-equality/safety-of-girls-and-women> (accessed 26/03/2014)

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