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Discrepancy between Dutch abortion legislation and international human rights standards

Introduction

The Symposium *Safeguarding Abortion Rights: Dutch Law in Context* on 18 September 2025 in Utrecht was co-organised by the Dutch CEDAW Network, the Dutch Association for Women and Law Clara Wichmann (VVR) and Bureau Clara Wichmann (BCW). The report of the Symposium (in English) is available via the website of the VVR.

Former CEDAW vice-chair Dr. **Genoveva Tisheva** delivered the key-note: *UN CEDAW Convention and the recent developments of the practice of the CEDAW Committee on the access of women to safe abortion*.

In her speech Dr. Tisheva amongst others provided quotations from recent Concluding Observations, such as Guatemala (2023), Brazil (2024, Germany (2023), Italy (2024).

Recurrent recommendations are:

- amend the Penal Code to legalize abortion and decriminalise it in all cases;
- ensure that women and girls have adequate access to safe abortion and post-abortion services;
- guarantee the full realisation of their rights, bodily autonomy to make free choices about their reproductive rights;
- remove the requirement for mandatory waiting periods, in line with the recommendations of the World Health Organisation.

Other speakers spoke about the Dutch situation and concluded that Dutch abortion law and practice does not meet the international standards as described by Dr. Tisheva.

The Dutch abortion legislation

The present abortion legislation, which still criminalises abortion, was conceived in the same era as the Women's Convention. In 1984, it entered into force and remained unamended until recently. International human rights aspects were not taken into consideration at the time, nor later.

The Termination of Pregnancy Act did not apply to menstrual regulation or over-due treatment, up to 16 days after the missed period.[1] The Penal Code was also not applicable to

[1] This made it possible for Women on Waves to prescribe the abortion pills in those situations, as was explained by speaker Gunilla Kleiverda, chair of the Board of Women on Waves.

menstrual regulation or over-due treatment. This exception was abolished by recent amendments of the abortion legislation (2023 resp. 2025)[2]. These changes ought to make it possible for a General Practitioner to prescribe abortion pills, up to 9 weeks after the last menstruation. Consequently, compared to the years before, the figures of the numbers of abortion in the Netherlands have risen since menstrual regulation is now counted as an abortion. This rise of 27% led to a lot of publicity in 2025 and an uproar among populist and Christian inspired politicians, who again called for new restrictions in the abortion law. At the symposium, Prof. Trudy Dehue explained how 'concept creep' works in this respect: a closer look at the figures clarifies that 87% of the number of 'abortions' in the Netherlands takes place within 5 weeks after fertilisation (or conception), of which most would not have been counted as 'abortion' before (since it was considered 'menstrual regulation').

BCW and VVR believe that Dutch abortion legislation is not in line with current human rights standards as formulated by CEDAW, as it:

- Criminalises abortion *(Abortion is a crime, except when a physician authorised to perform abortions, complies with the criteria laid down in the Termination of Pregnancy Act)*;
- Does not recognise a right to abortion *(If a pregnant person cannot access safe abortion, she does not have a legal right that she can invoke. Under Dutch legislation all decision-making capacity is invested in those physicians that are under the law authorised to perform abortions. Physicians are always free to refuse to perform an abortion)*;
- Does not ensure access to abortion *(The law stipulates that physicians authorised to perform abortions, are exempt from criminal liability if they comply with the requirements laid down in the Termination of Pregnancy Act. Hence there is access to abortion in the Netherlands because physicians are willing to perform this procedure, not because the law guarantees access)*;
- Requires that the physician only performs an abortion if 'the woman's emergency situation makes it unavoidable'. To that end the law lays down several requirements:
    - a mandatory – flexible - waiting period *(except when the pregnancy endangers the life or health of the pregnant person).* The time of this waiting period is to be determined by the physician and the person that wishes to terminate the pregnancy. *(Thus, following the law, a physician can obstruct speedy access to a safe abortion procedure if (s)he determines that the pregnant individual should wait and (re)consider her abortion for a longer period);*
    - The physician is required to discuss alternatives to abortion*;*
    - The physician must ensure 'that the woman has made her request voluntarily, after careful consideration, and with an understanding of her responsibility for the unborn life and the consequences for herself and her family*;*'

In addition, the Act imposes mandatory reporting obligations for physicians, requiring annual reporting on the number of abortions performed and detailed personal and demographic data of patients, as well as information on counselling, waiting periods, and consultations with other experts.

Dutch legislation thus not only criminalises abortion, thereby spurring stigma, but it also reproduces traditional gender roles and stereotypes regarding reproductive decision-making. The Termination of Pregnancy Act frames the pregnant person as someone who is unable to independently make a careful and informed decision about her reproductive health. By

[2] Adoption by Parliament in 2023. The last amendment entered, authorising GPs with license to prescribe abortion pills (mifepristone and misoprostol) into force 5 July 2025. Change in classification was implemented over the year 2023.

designating the physician as a gatekeeper who must, under the law, emphasize the pregnant person's 'responsibilities' - ensure they have thought about their decision carefully and are aware of their responsibility for 'unborn life' - the legislation reinforces well-established gendered assumptions. These include portrayals of pregnant women as emotionally unstable, overly driven by emotions, and therefore less capable of rational, autonomous decision-making in matters relating to their own bodies. The physician's supervisory role reflects longstanding normative ideas that women require oversight and guidance from others, often implicitly men assumed to be more rational, objective, and competent to judge what is in their best interest. In doing so, the law builds on deeply rooted notions of maternal duty, self-sacrifice, and women's primary social role as caregivers responsible for protecting and nurturing potential life, even at the expense of their own autonomy.

Bureau Clara Wichmann and the Dutch Association for Women and Law invite the Committee to discuss the discrepancy between the Dutch abortion legislation and international human rights standards as outlined above during the session 'Consideration of seventh periodic report of the Netherlands'. The Committee's recurrent recommendations remain highly relevant and would offer essential guidance to the State party.
Despite the Committee's previous recommendations (CEDAW/C/NLD/CO/6 para 37 and 38) to remove barriers for GP's to prescribe medication for the menstrual regulation or over-due treatment, significant obstacles persist. Although GPs may now prescribe abortion pills after completing mandatory training, abortion in the Netherlands continues to be regulated under, among other laws, the Penal Code. Recent legal amendments have placed menstrual regulation under both the Termination of Pregnancy Act and the Penal Code, thereby increasing—rather than reducing—the divergence from international human rights standards and exacerbating all adverse effects described above.

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