

The Rise of Women's Rights in Curaçao

The potential of the Women's Convention to the empowerment
and equal rights of women in Curaçao

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The potential of the Women's Convention to the empowerment and equal rights of women in Curaçao

De opkomst van vrouwenrechten in Curaçao

De potentieel van het VN-Vrouwenverdrag voor de versterking en de gelijke rechten van vrouwen in Curaçao
(met samenvatting in het Nederlands)

Lantamentu di Derechonan di Hende muhe na Kòrsou

E potensial di e Tratado di Hende muhé pa e empoderashon i derechonan igual di hende muhe na Kòrsou.
(ku sinopsis na Papiamentu)

El Surgimiento de los Derechos de la Mujer en Curazao

El potencial de la Convención sobre los derechos de las mujeres para el fortalecimiento y la igualdad de las mujeres en Curazao
(con resumen en Español)

PROEFSCHRIFT

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door

Adaly Marie-Lou Rodriguez

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Promotor: Prof. dr. J. Goldschmidt

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To my partner, G.G. (Gerry) Adriana and to my aunt, P.F. Rodriguez

Acknowledgements

As many people have observed, a PhD investigation can be a lonely process through which a person learns and grows. This assessment can definitely be confirmed in my case. It has been a long and tough process, through which I had to overcome many challenges.

My journey started in 2003 after finishing my studies, which began at the University of Utrecht and ended at the University of the Netherlands Antilles. I began work at the national university of the former Netherlands Antilles with an assignment to conduct scientific research and to teach public and constitutional law. I could have never guessed that this combination of tasks would turn out to be such a major endeavour and that it would influence the timeframe for the completion of this project so drastically.

Although I knew from the beginning that my study would be in the field of international human rights law, as my passion lay in this field, it was after a couple of years of searching for a suitable topic and for a supervisor, that it became clear to me which path I would be following, namely on the application of the Women's Convention in the Curaçaoan (legal and social) system. It was actually by coincidence that I found my supervisor, Professor Jenny Goldschmidt of the University of Utrecht. After a short first visit to the Netherlands in 2004, where I met her personally and after our first talks about my plans when it 'clicked' between us, it became clear to me that she would be the person to guide me in this journey. My plan of research, after the going back and forth of several drafts, was finally approved at the end of 2006 and that was the moment that the project officially started.

As a black Curaçaoan woman, born and raised on the island, returning to my native island after living for several years in the Netherlands due to the unavoidable migration of my family for socio-economic reasons, I faced many challenges. The ones that I encountered during my PhD path for instance were first and foremost connected to the burden of the combination of tasks and responsibilities which I had within the university department I worked in, and to the structural shortage of (financial) means, support, and mentoring locally.

I experienced challenges in the workplace related to my gender, ethnicity (race) and social background. I had to cope with many uncomfortable situations. These experiences increased my interest in the concepts of intersectional and multiple discrimination, what they meant, and the (male-dominated) culture which is so common, even in academic institutions. As the only black female academic employee in the faculty of law, which is directed by white Dutch migrants, part-time Dutch lecturers and professors from Dutch universities, and (white and mixed) locals with a Western (Dutch)-oriented (white) and male-dominated mindset, it turned out to be a real challenge for me, during the largest part of the research, to accomplish the goals I had set for myself. Thankfully, a draft of the manuscript was presented in 2013 and its revision was finalised in 2014.

As a matter of fact, I completed the circle of my academic education at the same university where I had started many years ago, namely the University of Utrecht. It was with the support of my supervisor, Professor Jenny Goldschmidt, that I was able to realise this lifework from a distance. I have no regrets whatsoever with regard to my decision to pursue an academic and intellectual career. During my time at the local institution I have learned a

lot and I was able to educate myself further in public, constitutional and human rights law. On the other hand, I realised that I had missed the structure, guidance and opportunities that PhD candidates of research institutions abroad receive.

In the small society of Curaçao the meaning of academic research, or the relevance of academic progress are often underestimated. Even at the level of the national university more emphasis is put on the teaching-oriented professions than on research concerning the identification and comprehension of the phenomena and challenges which this society is confronting. The creation of an academic environment for scientific research is therefore urgently necessary. The creation of a school of research, in collaboration with other international research institutions, and the allocation of funds for the cultivation of young local talent is, in my consideration, one of the first steps that has to be taken.

In regard to the topic of my research, namely the fulfilment of the rights of women and the furthering of their advancement in Curaçaoan society, it became clear to me that there are many misconceptions and myths about local women, as a collective, as ironically they are seen as independent, strong and emancipated individuals with (formal) equal rights. Consequently, the development and strengthening of the protection of women through the application of the Women's Convention is not seen as a need. The socio-economic backwardness that Curaçaoan women confront nowadays, however, shows the contrary. Also the institutionalised violence and the exploitation of which women are victims underline this thesis.

On the other hand, I have to draw attention to the fact that local women are indeed and in many aspects strong individuals. I have proved this myself by finishing this project against all the odds. Yet, the myth about local women's strength is related to women having no choice other than to survive in a male-oriented community which is characterised by its social, cultural, ethnic and gender stereotypes and institutionalised multiple forms of discrimination and oppression. And although the main goal of local women is to achieve a better future and opportunities for themselves and their children, many do not succeed. Women have to survive in a harsh society, nothing more and nothing less.

Misconceptions about the struggle of the women's movement, i.e. feminism, and its influence on women are prevalent in Curaçao. During the interviews I undertook with women active in governmental and NGO sectors in the field of women's development and women's rights, many proclaimed openly that they were under no circumstances feminists or fighters for women's rights, despite the fact that their attitudes and actions suggested the contrary. The lack of know-how, information and education among the population, governmental institutions and agencies and NGOs on the protection that norms and standards of human rights law can provide was also very striking.

In my own case, if I did not see myself as an advocate of feminism or activism prior to this project, I became one in the course of this research. It was a very eye-opening, transformative and liberating process. My belief that realisation of international human rights law at local level is the way to further emancipation and consciousness among the Curaçaoan people was strengthened.

The lack of cooperation and access to documentation from governmental agencies, NGOs and individuals, however, entailed barriers for my research. For instance, it was difficult for me to obtain interviews to key actors in the Government and Parliament. People

seemed unaware of the importance of the preservation of (official) documents for research and for the creation and cultivation of a common consciousness and memory. In my opinion this is one of the reasons why we lag behind in our overall development and know-how.

Despite all these shortcomings I was impressed by the work and resilience of the volunteers, mostly women, active in the NGO sector. They are working, despite the adverse circumstances, on behalf of vulnerable social groups in society. In particular, the accomplishments and activities displayed by local women and their organisations in the early days of the awareness-raising process were impressive. It is regrettable that their work and efforts were not properly documented and recorded.

Regardless of all the challenges I encountered during my PhD journey, the support and contribution I received from some people remains priceless. In this sense I would like to thank all the people who, against all the odds, believed in me and supported me.

First of all, my supervisor, Professor Jenny Goldschmidt, who was one of the few people who stood by my side from the beginning until the end; she really believed in this project and its completion. With her strict and sincere comments I came to understand the latest concepts and developments in international human rights law with which I was not that familiar. As I had many things to learn, her comments gave me the right directions and encouragement. Every time I sent (a new version of) a chapter, I looked forward, with many expectations, to her appraisal of my work. So, I cannot find enough words to express my sincere gratitude towards her. Jenny, many thanks, you really did make the difference!

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and for receiving me with open arms. Without these documents the completion of this project would have not been achieved. Valuable information was retrieved on the background of the developmental work furthering the advancement of local women undertaken by this organisation and many others. Several others provided valuable documents on the operation of their organisations as well, such as Mr G Willems (former *Stichting Antilliaanse Mede Financierings Organisatie* (AMFO)), Mrs L Alberto (Steering Committee Curaçao), Mrs D Schoop-Frans (Association for Responsible Planned Parenthood), Mrs C Martha (*Stichting Muhenan Arma I Uniforma* (MUA)), Mr A-M de Vries (*Stichting Maatschappelijk Zorg en Herstel*), Mrs D Leer (*Stichting Slachtofferhulp Curaçao*) and Mrs A Kwidama (*Fundashon Kas Popular* (FKP)).

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20 April 2015, Willemstad, Curaçao.

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Chapter 1

GENERAL INTRODUCTION

§ 1.1 Introduction

In 1979 the United Nations adopted a convention¹ which exclusively addresses the elimination of discrimination against and ill-treatment of women and their inferior position in society and furthers their development. The International Convention on the Elimination of all forms of Discrimination against Women (hereafter: the Women's Convention) introduces a gender-based approach to the equality principle. All States party to this Convention, including the Kingdom of the Netherlands (hereafter: the Kingdom), have an obligation to adopt and implement (legal) measures and policies to ensure equal opportunities for the development of women in all areas. The countries which form this Kingdom, the Netherlands, Aruba, Curaçao and Sint Maarten, are all bound by the obligations laid down in this convention to realise, promote and protect the most fundamental rights and freedoms of women on an equal footing with men.²

In this study I examine the practical implementation of the Women's Convention in Curaçao. My investigation explores ways to combat the discrimination and ill-treatment which local women suffer and to strengthen their position and development. Through the implementation of the principles, standards and norms enshrined in the convention by governmental agencies from above and civil society and non-governmental organisations (hereafter: NGOs),³ from below, progress and equal opportunities can be created for local women.

Since the dissolution of the former Netherlands Antilles in 2010, Curaçao, a small Caribbean island with a colonial past, finds itself in a process of emancipation. The effectuation of international human rights law is of great importance in this process of development and

1 The Convention was adopted on 18 December 1979, by the General Assembly of the United Nations, after intense debate on the political preamble. GA A/RES/ 34/180.

2 The three less populated islands, Bonaire, Sint Eustatius and Saba (the so-called BES-islands), became an integral part of the Dutch constitutional structure, and are presently Dutch territories. They are known as the Caribbean Netherlands ('*Caribisch Nederland*'). For a contribution on the legal challenges and the constitutional inconsistencies regarding their incorporation into the Dutch legal structure see Hoogers 2010 (b), pp. 378-397; Besselink 2011, pp. 4-7.

3 Throughout this investigation I use the term NGOs, which in some cases regard civil society and NGOs. Yet, the term 'civil society' is much broader than NGOs, as it includes, for instance, also the academic and social movements and intellectuals. The term 'NGOs' applies to the non-profitable, voluntary sector. In accordance with international guidelines, the Government is not allowed to act as the main source of income for these organisations. Brett 2009, p. 623.

emancipation. The deep-rooted colonial past with its background of imperialism, racism and oppression, has influenced ideas on the position and role of social groups, and of women and men. This is the reason why I start from the view that the implementation of international human rights law, more specifically the Women's Convention, starting from a contextual approach, can have a really noticeable effect on the further development and emancipation of the population of this small island, particularly of women.⁴ This point of view leads me to examine the meaning of the Women's Convention at country level.

As a black woman, I hold the conviction and belief that progressive and conscious usage of international (women's) human rights law by governmental agencies and NGOs, can create a more egalitarian society based on social justice. It is with this understanding that I consider the historical, socio-economic and legal particularities that have formed and transformed contemporary Curaçaoan society, starting from a human rights perspective. The question is though, to what extent and how can obligations and rights set out in the Women's Convention contribute to a more progressive development benefiting local women.

§ 1.2 General, social and economic characteristics of Curaçao

Curaçao has been a self-governing country within the Kingdom since 10 October 2010. It first formed part of the colony of Curaçao and dependencies from 1634 until 1954, the year when the former Netherlands Antilles came into being. The former Netherlands Antilles was a self-governing country consisting of six islands⁵ within the Kingdom. After the separate status of Aruba was achieved in 1986, the island-territory of Curaçao remained part of the Netherlands Antilles of five islands. Since 2005 this group has been subjected to a restructuring process, which finally resulted in its dissolution in 2010.

With an area of 444 square kilometres and its capital Willemstad, Curaçao is situated between 30 and 90 kilometres from the South American continent. Its population by 2011 was 150,563, of whom the vast majority are of African descent. This multi-ethnic, multicultural and multi-lingual society consists of a large number of ethnic groups,⁶ of which the Dutch, Jews, Portuguese, Chinese, *Latinos*⁷ and Hindus are the most influential. The local language is '*Papiamentu*', but there are also three other (Western) languages⁸ that are often spoken by many people.

Despite the overall diminishing influence of the Roman Catholic Church in recent years, a vast majority of the inhabitants are still Catholic.⁹ Of the total population, 81,715 are women and 68,848 are men. As a result of the colonial past, where division and differentiation, based on social and ethnic background, became internalised, both monogamous and single-

4 For more details on the local context see Chapter 2.

5 Until 1986, the three Leeward Islands, Aruba, Bonaire and Curaçao, and the three Windward Islands, Sint Maarten, Saba and Sint Eustatius formed the former Netherlands Antilles.

6 There are more than 60 different nationalities living on the island.

7 '*Latinos*' are people from Spanish speaking countries, like Santo Domingo, Colombia, Venezuela, Ecuador and Peru who migrated to Curaçao. For a research on recent regional migration and integration of migrants in Curaçao see De Bruijn & Groot 2014.

8 The languages are Dutch, English and Spanish. Dutch and English are recognised as official languages. Spanish is, however, quite prominent and often spoken due to the influences from South America and migrants from the region. See the National Ordinance on official languages of 2007 (P.B. 2007, no. 20); '*Eerste resultaten census Curaçao*' (Central Bureau of Statistics (CBS)), Willemstad 31 July 2012, p. 14.

9 *Ibid.*, p. 7.

parent¹⁰ family structures were constructed and established. Curaçao is presently going through a serious ageing process¹¹ and for many decades it has experienced the phenomenon of brain drain, where a significant part of the young population leaves the island in pursuit of further studies or better economic and social conditions abroad, particularly in the Netherlands. The majority of these people are not returning to their birth island.

The economic pillars are the oil-refinery, tourism, financial services, the shipyard and trade. All these sectors have been experiencing severe constraints in recent years, which have led to a painful slowdown of the economy of the island. Accordingly, the island has registered a high unemployment rate, particularly amongst the young.¹²

Its political structure can be characterised as a parliamentary democracy with a division of powers based on the rule of law, which primarily finds its foundation in the Constitution of Curaçao of 2010.¹³ The official head of the State is the King of the Netherlands, who is represented on the island by the Governor. The Constitution of Curaçao sets out a list of the most fundamental rights and freedoms of the inhabitants,¹⁴ which have to be respected and protected by all governmental institutions and third parties.

Considering that the social and legal characteristics co-define the implementation of the Women's Convention at a local level, the following central question is formulated.

§ 1.3 Central question of research

All State-parties have the responsibility to guarantee the proper implementation and realisation of the fundamental rights and freedoms enshrined in the Women's Convention in their national legal systems. Also, the Kingdom is accountable and responsible for the violations of human rights suffered by women living throughout the entire realm. Curaçao, as an autonomous country within this Kingdom, has its own responsibilities and duties in this regard, as stipulated in Article 43 paragraph 1 Charter.¹⁵ All branches of Government and other governmental agencies have the obligation to promote, develop and effectuate policies and (legal) measures as mandated by the Women's Convention. They have to take steps towards the effective protection of and elimination of discrimination against women. Their actions should be directed at the strengthening of the overall position of women in society.

Moreover, the progressive and dynamic nature of this convention, particularly expressed in Articles 5 and 16 Women's Convention, suggests that it can assist the countries within the Kingdom with effective guidelines in their quest for the advancement and protection of women. Through the norms under Article 5 Women's Convention the countries have an obligation to undertake measures to eliminate harmful gender stereotypes and fixed

10 Currently 44% of all families have a female as head of the family. *Ibid.*, p. 15.

11 *Ibid.*, pp. 2-4.

12 By the end of 2013 overall unemployment increased from 9.8% (2011) to 13%. Although youth unemployment in 2011 (24.7%) declined in comparison with 2001 (33.8%) it still remained very high. By 2013 it had increased to 37%. '*Resultaten Arbeidskrachtenonderzoek (AKO) Curaçao 2011*' (Central Bureau of Statistics (CBS)), 18 September 2012, p. 15; '*Resultaten Arbeidskrachtenonderzoek (AKO) Curaçao 2013*' (Central Bureau of Statistics (CBS)), 2 December 2013, p. 15; daily newspaper '*Amigoe*', 5 May 2014, p. 2; see also overviews on www.cbs.cw, last visited on 19 April 2015.

13 A.B. 2010, no. 86.

14 Articles 3 to 27 Constitution of Curaçao.

15 The Charter for the Kingdom of the Netherlands of 1954 (Stb. 1954, no. 503).

parental roles that are to the disadvantage of women. Transformation of harmful gender-based differential constructs should be the objective of every State, including the Kingdom. As far as Article 16 Women's Convention goes, the provision brings the rights discourse into the private domain by declaring that States have an obligation to ensure the equal rights of women in family matters. Although in many societies women have a prominent position in the private domain, this is influenced by gender-based socio-economic, cultural and religious constructs, which, in many cases, hinder their development. In my perception this is also the case for Curaçaoan women. This is the underlying reason why specific attention is paid to ways in which these provisions should be implemented domestically with the objective of alleviating the oppression and ill-treatment of women.

The central question of the research is therefore:

How should the Women's Convention be implemented in the legal (and social) system of Curaçao to create positive conditions to improve the situation of women in the particular historical, cultural and socio-economical context of Curaçao, and how can, in particular, Articles 5 and Article 16 Women's Convention be instruments to accomplish this?

This question is addressed through the following subsidiary questions:

1. Which historical, socio-economic and cultural developments have determined the position of Curaçaoan women?
2. What have been thus far the efforts of the State-institutions and the women's movement in the promotion of women's rights at country level?
3. What was and is the practical meaning and added value of (inter)national equal treatment norms, such as those under the Women's Convention, for the protection offered to local women?
4. How can compliance with the norms under Articles 5 and 16 Women's Convention support the further development and protection of Curaçaoan women?
5. What is the potential role of State-agencies and other actors such as (women's) NGOs for the realisation of women's (human) rights in Curaçao?

§ 1.4 Main focal points

I contemplate these questions, and subsequently attempt to provide possible answers, through several main focal points, which start from the two pillars of the investigation. These pillars are firstly the accountability of the State in the realisation from above of the obligations recorded in the Women's Convention and, secondly, the role and contribution of NGOs, from below in the further empowerment of Curaçaoan women. They form the points of departure of the framework that has been created, based on the human rights-based approach to development of which the 'PANEL' analysis is a simplification of.¹⁶ It stands for an analysis on the five aspects which are Participation, Accountability, Non-discrimination, Empowerment and Linkage to human rights, stemming from the typology of the State's obligation to act towards the respect, protection and fulfilment of women's (human) rights.

¹⁶ Frankovits 2006, p. 54.

In short, the human rights-based approach to development for the advancement and protection of women at country level is examined here.

§ 1.4.1 *The selected approach*

This study begins from the human rights-based approach to development which exhibits a conceptual framework, presented in Chapter 5, for the incorporation of human rights principles and standards in the development of policy and programmes in favour of the progress of vulnerable groups in a society, in the struggle against poverty, exclusion and backwardness. The six human rights principles and standards are: (1) universality and inalienability, (2) indivisibility, (3) interdependence and inter-relatedness of human rights, (4) participation and inclusion, (5) equality and non-discrimination and (6) accountability and rule of law.¹⁷ This human rights-based approach aims at strengthening the capacity of the State as the main duty-bearers and empowering vulnerable social groups as the rights-holders.

The elements for the human rights-based approach to development programmes require (1) the assessment and analysis of the (social) context and of the claims and the parties involved, (2) designing of the programmes directed towards the claims of the rights-holders and the obligations of the duty-bearers, (3) the implementation, monitoring and evaluation of the programmes, and (4) informing of the programmes through the recommendations of human rights treaty bodies and mechanisms.¹⁸

Through the performance of an analysis, where the participation of women and their organisations, State(agency) accountability, the empowerment of women, non-discrimination and equality as a guiding principle and the linkage with human rights are emphasised, I am able to put forward some guidelines for the further effectuation of women's rights at a domestic level.

§ 1.4.2 *The historical, socio-economic and political context of Curaçao*

It is essential that, from the historical, social and political backdrop, more insight is gained into the (legal and social) position of local women. The history of Curaçao is characterised by colonialism, slavery, imperialism, classicism and racism. With the (forceful) establishment of the main ethnic groups, the foundation was set for the creation of a multicultural, multi-ethnic and multi-lingual society. However, the position which members of the distinct ethnic groups occupy in the former colony of Curaçao and dependencies was determined by racial- and class-based mechanisms. The socio-economic and cultural position of women and men was also related to these social classifications.¹⁹

Despite the fact that the gender aspect was not explicitly defined in the colonial period, it was evident that the roles of men and women were constructed through the social

17 See the UN Statement of Common Understanding on human rights based approach to development cooperation and programming, available on: www.hrbportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies, last visited on 19 April 2015; also available on www.undg.org, last visited on 19 April 2015.

18 Ibid.; Parra 2012, pp. 11-28.

19 Römer-Kenepa 1992, pp. 21-42.

mechanisms valid in the then colonial structure.²⁰ Those original power-relations did not alter with the emancipation of slaves in 1863 and the industrialisation process introduced by the establishment of the Royal Dutch Shell Oil Company afterwards. Most of these social mechanisms and constructs, which are still visible in contemporary Curaçaoan society, are outlined in § 2.4 and § 2.5.

Western-European and (Catholic) religious norms greatly influenced the roles, identity and position of individual members of the population. These norms started from and strengthened perceptions about white male supremacy. Industrialisation brought rapid socio-economic changes and the further transformation of society into a multicultural society based on class and ethnic distinctions. In the political sense, the self-governing country known as the Netherlands Antilles, consisting of six islands,²¹ came into being in 1954, after the growth in political consciousness and awareness brought about by industrialisation and the indirect effects of World War II. I present briefly in § 2.3 the historical backdrop to the political and governmental structure of Curaçao.

The economic-, legal-, religious- and racial-based divisions developed during the colonial period among the ethnic groups are (un)consciously kept in place and they define the position which social groups, such as women, occupy.²² Due to many historical factors Curaçaoan women are mythologised as strong and independent individuals. Their forceful, prominent role in women-centred family structures, where many men displayed migratory behaviour, is one of the consequences of that.

As the rapid industrialisation and economic prosperity did not transform the persistent (social and economic) inequality and disparity among the social groups, the revolt of 30 May 1969 became inevitable. The societal and awareness raising effects of this revolt which were meaningful, particularly for the African descendants and women, are described in inter alia § 2.6, § 2.9.5 and § 4.2. The socio-economic developments that followed in the late 1980s and early 1990s negatively impacted the further development of various social groups. The dissolution of the former Netherlands Antilles, which became inevitable after the departure of Aruba from this group in 1986, gave Curaçao a conditioned autonomous status within the Kingdom in 2010.²³ In short, all the events mentioned above and many others are ranged against the empowerment process which women went through in the course of time.

§ 1.4.3 *From fundamental rights and freedoms to women's human rights*

Human rights are the most fundamental rights and freedoms belonging to every human being. For human rights to be effective, they have to become a respected and undeniable part of the culture and tradition of a society, regardless of any Act of law. Fundamental rights and freedoms are usually divided into categories or dimensions; a characterisation which is connected to the time-period in which they were developed and formulated.

20 For an extensive study on these mechanisms consider e.g. Allen 2007.

21 For more background information on these islands see § 2.3.

22 See e.g. Hoetink 1957; Römer 1979; Rosalia 1997; Oostindie 1997; Römer 1998; Allen 2007.

23 It is stated that Curaçao (and also Sint Maarten) will obtain full autonomous status within the Kingdom in 2025. It is formally in the so-called 'setting up phase'. See '*De Toekomst van ons Land Curaçao: Wie willen we zijn? Hoe worden we dat? Waar gaan we naar toe? Hoe komen we daar? Wat willen we bereiken? Hoe doen we dat?*' (Visiedocument Land Curaçao: een uitgave van het Bestuurscollege van het Eilandgebied Curaçao), Oktober 2009 (eindversie).

The distinction between the dimensions of human rights determines the manner in which they are effectuated by the State. However, with the general recognition of the indivisibility, inter-connectedness, inter-dependence and the interrelation of human rights, the effectuation mechanism of many human rights, particularly social, economic and cultural rights, has been strengthened. Accordingly, I consider in § 3.2 to § 3.5 several approaches to human rights, their development and the ways in which they should be fulfilled by governmental agencies. With the adoption of the fundamental rights and freedoms into national constitutions and international conventions, the essential rights and freedoms of individuals were acknowledged and protected in societies in one way or another. This includes Curaçao as a young developing country as well.

Next to the most important human rights conventions such as (1) the International Covenant on Civil and Political Rights (ICCPR), (2) the International Covenant on Economic, Social and Cultural rights (ICESCR), (3) the European Convention for the Protection of Human Rights and Fundamental Freedom (ECHR) and (4) the European Social Charter (ESH), I have to consider specific human rights conventions, which include the fundamental rights and freedoms of vulnerable social groups within society, such as children and women, which are respectively enshrined in the International Convention on the Rights of the Child (ICRC) and the Women's Convention. These conventions are applicable in the struggle against disadvantage and injustice experienced by all the citizens in the Kingdom based on their gender, age, race and religion and so forth.

It is commonly acknowledged, as described in § 3.6 and § 3.10, that the worldwide women's movement, i.e. feminism, had a great influence on the adoption of the Women's Convention. Feminism represented the struggle against the subordination of women through patriarchal social constructs for many centuries. It acknowledges many mainstreams, identified in § 3.8, with each having their own approach to the attainment of liberation by women and the realisation of equality for women. The efforts of the international women's movement resulted eventually in the recognition of women's rights as human rights and the adoption of various declarations and conventions on the rights of women by the United Nations.²⁴ These developments were sustained by, inter alia, the proclamation of International Women's Year of 1975 and several World Conferences on Women. Ultimately, with the adoption of the Beijing Declaration and the Platform for Action in 1995,²⁵ a comprehensive framework was created for the accomplishment of the advancement of women and female children and the realisation of their most fundamental rights on the basis of equality with men. Afterwards, the process of the incorporation of gender-perspective into the mainstream human rights system of the United Nations and of State-members was initiated; a progressive development that certainly has to be applauded. Its implication for Curaçao is subsequently looked into in § 4.2 and § 4.3.

§ 1.4.4 *Claims of women and the women's movement in Curaçao*

As part of the international community, Curaçao has not been immune to international developments in the field of the advancement of women. It has also registered the impact of the international women's movement, particularly in the 1970s. The obtainment of insight

24 For a short contribution on the matter see Qurensi 2012, pp. 111-124.

25 A/Conf.177/20/Rev.1, para. 201.

into the (positive) influences of this movement on the empowerment of local women is important for the establishment of the status of women and the empowerment that is required. The development and the visibility of the movement in this society were acknowledged by many. The question is though whether or not it has maintained its progressive influence on the further development of local women. Until the 1970s the majority of women primarily had roles as carers and home-makers. They were severely discriminated against. For instance, in the public sector women were not allowed to work after marriage or whilst living in de facto unions.²⁶

As a result of international developments, awareness among Curaçaoan women grew, which led to the establishment of several women's organisations, such as the umbrella organisation Steering Committee Curaçao and the Women's Development Centre (SEDA).²⁷ The contribution of these organisations was significant for the advancement and development of women in general. The support of the Government of the former Netherlands Antilles in these matters was also immense. The participation of the former Antillean governmental sector and the NGOs at several regional and international conferences and forums was exemplary. This strengthened the awareness and the creation of programmes and projects directed towards the advancement of women. The developments are explained in § 4.4 to § 4.6. Through the examination of the creation of (part of) a national machinery and a gender policy by the former Netherlands Antilles and subsequently the island-territory of Curaçao, a picture of the role of the then federal (Antillean) and local (Curaçaoan) Executives on the strengthening of the position of women is built up. The contribution of women's organisations (NGOs) to the implementation of these policies and programmes is also clarified.

§ 1.4.5 *The constitutional framework*

Curaçao has its own legal framework of fundamental rights and freedoms stipulated firstly in its Constitution.²⁸ The national Government has an obligation to respect, protect, promote and realise these rights and freedoms against violation and negligence by all its branches, agencies and third parties. This is explicitly prescribed in Article 43 paragraph 1 Charter which says that 'Each of the countries shall promote the realisation of fundamental rights and freedoms, legal certainty and good governance.' Article 43 paragraph 2 Charter stipulates further that 'The safeguarding of such rights and freedoms, legal certainty and good governance shall be a Kingdom affair.' The Kingdom has thus the subsidiary (yet ultimate) responsibility to safeguard the rights and freedoms of all Dutch nationals, and also foreigners in Curaçao. The starting point is that the realisation and protection of human rights is an internal affair; a task to be executed by the local governmental agencies. Only when the national branches of Government do not comply with their obligations in this regard does the Kingdom's Government have the authority to redress the wrongful situation

26 Article 95 para. 1 and Art. 96 National Ordinance on legal and material rights and obligations of civil servants (hereafter: L.M.A) 1964. See also Art. 6 paras. 3 and 4 L.M.A.1964. Based on this provision married female civil servants could not have permanent employment, only part-time employment in exceptional cases.

27 The name has now been changed to 'The Development Centre for women and their families'. In the course of this investigation I will use the denomination 'The Women's Development Centre (SEDA)'.

28 It is officially '*de Staatsregeling van Curaçao*' (the State-regulation of Curaçao). In the course of this study I will use the term 'constitution' to accentuate its higher ranking in the legal system of the island.

through the supervision instruments that it has at its disposal.²⁹ It then has the power to intervene in the internal governance of the Caribbean countries. I consider the complexity of this construct in § 6.7 and § 6.9.1. Moreover, the domestic framework of protection of human rights is further strengthened by the international and regional conventions to which this Kingdom is bound. Nonetheless, the international machinery for the protection of human rights law is subsidiary to the national apparatus.

In short, domestic law determines the framework in which the realisation of international human rights law should be accomplished. The academic literature³⁰ effectively acknowledges two general approaches that address the relationship between international and domestic law. I will point out, in an exploration in § 6.4 and § 6.5, which theory is embraced by Curaçao and how it is modelled on the Dutch system. The legal construct regulating the effectuation of international law in the Curaçaoan domestic law system determines the degree of protection given in cases of infringement of the rights of citizens. Through the procedure of reviewing domestic law on international (human rights) law, discussed in § 6.8, the judiciary provides much of this protection.

§ 1.4.6 *Right to equal treatment and non-discrimination*

One of the most important fundamental rights is the right of individuals to be treated equally by the law and before the law. Equality enhances the right of every individual to be treated equally, regardless of his/her creed, ethnic, political, physical and mental abilities and/or religious background. General non-discrimination and equality norms which are formulated in many human rights conventions³¹ and in Article 3 Constitution of Curaçao³² depart from a gender-neutral norm that mandates equal treatment of both men and women.

The formal and substantive approaches to the equality principle for the realisation of equality for people are the most commonly known approaches. For the realisation of equality for women, the applicability of substantive equality is embraced. Yet, the recognition of transformative equality and equality of opportunity has given an additional progressive take on the realisation of equality for the most vulnerable groups in society, including women. Subsequently, in § 7.2 an exhibition of some important aspects of this principle can be encountered.

Non-discrimination as a species of the equality norm presents itself when an unjustified and unreasonable differentiation in treatment of people is made based on personal characteristic(s) that cannot be denied or erased. Furthermore, the objectives and aims that are to be achieved with the distinction are not legitimated. Apart from the direct form of discrimination, there is indirect discrimination and even the discrimination of people on multiple grounds is currently recognised. Women suffer the most under this type of differential treatment, as they are discriminated against based on, amongst other factors, their gender, race, religion and social class. This is the reason why I have incorporated in § 7.5 an elaboration on the conceptualisation of multiple discrimination and intersectionality.

29 In this regard it can effectively apply the mechanisms under Arts. 50 and 51 Charter. For more details on this legal construct see Chapter 6.

30 See e.g. Sondaal 1986; Malanckzuk 1997; Fleuren 2004; Nowak 2006; Kooijmans 2008; Burkens e.a. 2012; Kortmann/Bovend'Eert 2012; Van der Pot/ Elzinga, de Lange & Hoogers 2014.

31 See e.g. Art. 26 ICCPR and Art. 14 ECHR.

32 This provision is modelled on Art. 1 Constitution of the Netherlands.

As a matter of fact, the multiple discrimination which black women have experienced, has been contemplated under the concept of intersectionality; a concept which was introduced by black female legal scholars, such as Crenshaw,³³ in the 1980s in the United States. Intersectionality implies the recognition of the multiple discrimination that vulnerable groups within society suffer, yet it is difficult to identify under the established forms of discrimination as the operation and interaction of the grounds are so intertwined that they have become inseparable.³⁴

In Curaçao equality and non-discrimination norms had liberating effects for women in the 1980s and 1990s. This is illustrated in § 7.7. Yet, local women as a heterogeneous social group still encounter differentiation in treatment based on their gender and other grounds, which more often than not results in all kinds of injustice, disadvantage and exclusion. My thesis states therefore that the subordination and oppression which local women suffer are correlated with discriminatory gender stereotypes and fixed parental roles, beginning with male-dominated perceptions. The guidelines provided by the Women's Convention and the general recommendations of the Committee that supervises its implementation can hand out adequate (legal) tools to attend to the ill-treatment which women receive and strengthen the equal treatment framework for their protection against discrimination. Subsequently, the contribution of the Women's Convention's mechanisms is addressed in Chapter 11.

§ 1.4.7 *State's accountability and the contribution of NGOs*

The further improvement of the effectuation of women's (human) rights in the legal and social system of Curaçao through the development, implementation and monitoring of programmes and projects is also crucial for the advancement of women (and men). Simply put, the effectuation of women's (human) rights is co-related to the obligation of the Government, to include a gender perspective in national policy and create a national machinery, so that the advancement of women can be accomplished, as mandated in the Beijing Declaration and Platform for Action and the (Article 3) Women's Convention. The elements for the creation and realisation of a national protection system, through a study of the contribution of duty bearers such as the Executive, the judiciary and the legislature and independent human rights institutions for the promotion, protection and fulfilment of women's (human) rights, are examined in § 8.3. The status of the national machinery and a cohesive gender policy is investigated and the presence of the required mechanisms such as sufficient financial means, capable personnel and expertise and governmental stability for the implementation of the mainstreaming of gender is contemplated in § 8.4 to § 8.6. And, as is discussed in § 8.7, the contribution of NGOs, as actors from below to the implementation of the programmes also has to be taken into account, as rights-holders more often than not do not know their rights or are not aware of the protection mechanisms available to them. The support they receive from these non-State actors is therefore of the essence for their development and growth. In my view NGOs should be actors able and capable

33 Crenshaw 1989; Crenshaw 1991.

34 See e.g. Hooks 2000 (b); 'Tackling Multiple Discrimination: Practices, policies and laws', European Commission, Luxembourg: Office for Official Publications of the European Communities 2007; Conaghan 2007, pp. 317-334; Solanke 2008, pp. 115-131; Schiek 2008, pp. 3-18; Collins 2009; 'Multiple Discrimination in EU Law: Opportunities for legal responses to intersectional gender discrimination?', European network of legal experts in the field of gender equality, European Commission 2009; Nash 2011, pp. 445-470.

of transforming the international standards, values and norms enshrined in the Women's Convention into effective instruments for rights-holders.

§ 1.4.8 *Gender stereotypes and fixed parental roles as mechanisms of subordination of local women*

The Women's Convention moves away from the gender-neutral norm that mandates the equal treatment of men and women, and towards a substantive and transformative equality norm. It considers the particular nature of discrimination against women, including violence against women.³⁵ The general framework for the substantive provisions laid down in the Convention is set out in Articles 1, 2, 3, 24 and 5 Women's Convention, which is extensively described in § 7.8. Article 5 together with Article 2 paragraph f Women's Convention underlines the connection between the traditional stereotypical perceptions and ideas on gender roles within a society and the existing unequal treatment and discrimination against women. This marks the unique characteristic of the Convention, namely the obligation of State-governments to develop programmes to change wrongful gender perceptions and fixed parental roles within society.

Gender in itself is a changeable concept, connected to circumstances in time and place. It describes the cultural, social and historical constructions and responsibilities which men and women have in a society, based on the biological differences that exist between them. The concept does not solely define those biological differences, but also the social and cultural expectation of the roles and positions which the genders may play in society. Gender plays a role at the personal, symbolic and institutional levels.³⁶ The concept does not only define the social construct of masculinity (male) and femininity (female), but also the power relations within a society, which gives meaning to it on a symbolical level.³⁷ As a matter of fact, gender roles are changing drastically in rapidly changing societies, which permits and stimulates women's participation in male dominated social areas. These progressive changes, however, do not imply that women have the ultimate freedom to participate fully in all sectors like men do. In many areas they are still considered to be inferior to men. Women are often characterised as 'superior' only in those roles that are related to the fulfilment of their traditionally determined roles as mothers and carers.³⁸

The effectuation of Article 5 Women's Convention in the domestic legal and social system suggests an instrument that demands the transformation of social and cultural perceptions that keep in place the subordinated position of women based on wrongful³⁹ gender stereotypes. Article 5 paragraph a Women's Convention stipulates that State parties have the obligation:

35 CEDAW GR 12 (1989) and CEDAW GR 19 (1992).

36 Wekker 2011, pp. 214-217.

37 Ibid.; see also Waaldijk 1993, pp. 34, 41-42; Kibbelaar 2005, pp. 52-56; Narain 2009, pp. 17-18.

38 Holtmaat 2012, pp. 146-147.

39 According to Holtmaat this refers to the elimination of social, legal and religious constructs that only reflect the subordination of women and their unequal position compared to men and not to all (gender) stereotypes. The elimination of all gender stereotypes would be shown to be futile as they constitute the foundation for gender-identity within a community, and this would lead to uncertainty and anxiety. Ibid., pp. 147-149.

to modify the social and cultural patterns of conduct of men and women, with the view to achieving the elimination of prejudice and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

In its paragraph b it ensures the State's obligation on proper family education and better understanding of maternity as a social function.

Through the guidelines given in the General recommendations of the Committee, I consider in § 9.2 to § 9.6 which way this change can be accomplished, as gender stereotypes and fixed parental roles effectively influence the benefits for women from their rights of citizenship such as education, employment and political participation and also their contribution to the family scene. I select therefore three areas to verify and prove, in correlation with Article 5 Women's Convention and the General recommendations concerned, whether gender stereotypes and fixed parental roles have had a major impact on the further development of Curaçaoan women. In § 9.7 to § 9.9 the selected areas are looked at more closely. Subsequently, considerations on the gender aspect in the (formal) educational system and the performance of a youngster in the school system are put into perspective. This is followed by an assessment of the participation of women in the labour market. And, lastly, the social phenomenon of teenage pregnancy and some of its effects on the development of the female is shortly considered.

§ 1.4.9 Implementation of Article 16 Women's Convention: the scrutiny

An area which is explicitly explored is the equal rights of women in the private sphere, more specifically the responsibility of both men and women in family matters. My starting point is that both men and women should have the same rights concerning their family and the upbringing of their offspring. Women should have freedom in the choice of their spouse. All these freedoms and rights are guaranteed in Article 16 Women's Convention. The State-government has an obligation to take measures to eliminate discrimination against women in the private sphere and in family law and policy, as prescribed in General recommendation no. 29.⁴⁰ The possible discrepancies that exist in the family law of Curaçao stemming from the law of the former Netherlands Antilles are therefore pointed out. A question which is looked into is: in what manner do provisions recorded in Book 1 of the Civil Code consider the family rights of women from a gender-sensitive perspective?

Motherhood and marriage remain the primary goals in the lives of many girls and women in Curaçao. These roles revolve around the confinement of the home. Women could, up until a decade ago, only obtain a (legal) divorce if they applied the so-called blame construction.⁴¹ Book 1 of the Civil Code of the former Netherlands Antilles⁴² brought about changes in this situation, but divorce remained bound by limitations. These limitations are

40 CEDAW GR 29 (2013), para. 18.

41 This construction, locally known as the 'big deceit', was based on the phenomenon whereby one of the spouses would admit 'adultery' or another ground based on Art. 1:258 para. 4 Civil Code (old). The problem with this construction lay in the alimony provision, namely Art. 1:274 Civil Code (old), which often was of benefit to the spouse who filed for divorce, which in many cases was the wife. The one who admitted adultery, who was the husband, obtained an obligation to provide for his former wife for the rest of his life.

42 P.B. 2000, no. 178.

scrutinised to establish whether this part of the domestic law complies with the obligations set out in the Women's Convention.

Examination of the latest legal adaptation of family law on the issues of (1) marriage and (2) divorce, (3) (joint) parental authority, (4) the right to choose a surname, (5) parentage and (6) the judicial establishment of paternity, is undertaken in Chapter 10. Through this scrutiny it is established whether or not there are persisting inequalities in the family law of Curaçao, and whether or not changes in these differentiations can be accomplished by the appropriate implementation of the Women's Convention and the General recommendations of the Committee.

§ 1.4.10 *Relevancy of the application of the mechanisms under the Convention by the Committee for Curaçao*

With the ratification of the Women's Convention the Kingdom accepted the obligations which stem from it. It is obliged to adopt and implement national laws and policies directed to the protection of women's rights. The Kingdom is to report periodically to the supervisory body of the Convention on the progress it has made in the field of the emancipation and progress of women. It reported for the first time to the Committee in 1992.⁴³ Compliance with the obligations by the former Netherlands Antilles, which included Curaçao, was reported on as well. The concluding comments of the Committee, as guidelines for the realisation of the rights of women, are therefore of utmost relevancy for the establishment of the status of the realisation of women's rights at country level. In this sense I also take into account the information which the supervisory Committee received from local NGOs. Matters related to the reporting obligation of Curaçao are considered in § 11.4 to § 11.9.

Until 1999 the reporting procedure was the only instrument which the Committee had in the fulfilment of its supervisory tasks, pursuant to Article 18 Women's Convention. Based on these reports the Committee formulated many General recommendations, which provided additional guidelines for the States on best practice for implementing the Women's Convention. The Committee obtained through the Optional Protocol⁴⁴ of 1999 an effective supervision instrument, the petition procedure, and since then the Committee has been receiving and considering complaints regarding violation of women's rights submitted by or on behalf of alleged victims, after all domestic remedies have been exhausted. The possibility of the Committee to initiate a confidential investigation on possible grave or systematic violation of women's rights committed by a State-party has also been created. In § 11.10 and § 11.11 these two instruments and their application by the Committee for the strengthening of the position of local women are looked at.

§ 1.5 **Method of research and delineation**

The subject of my study concerns the effectuation of specific international legal (human rights) measures enshrined in the Women's Convention and the recommendations of a treaty-based body in the (legal and social) system of Curaçao.

43 CEDAW/C/NET/1, 1993; CEDAW/C/NET/1/Add.1, 1993; CEDAW/C/NET/1/Add.2, 1999.

44 UN Doc. A/RES/54/4.

The method applied starts first of all from traditional, legal desk research, which implies an analysis of (national and international) laws and legal documents. It also involves legal conceptual research into the meaning and background of the core concepts of relevant (human rights) law. In addition, historical research is performed based on academic literature and other available materials to describe the background of the position of women in Curaçao. Interviews were an additional source of information to complement the insights gained, in particular to get information on the functioning of the national machinery and local NGOs and their programmes, and the status of the national gender policy, although without aiming at complete empirical research. Thus, it encompasses legal desk research, legal conceptual and historical research supplemented with interviews for additional background information. In sum, this study describes, compares and evaluates the implementation of the Women's Convention in the domestic system.

My investigation is directed to an assessment of the legal and social position of Curaçaoan women up until May 2014 in accordance with the Women's Convention. A top-down and bottom-up approach is applied. It revolves around the State-obligation in the application of the convention and the 'soft law' of the Committee, where legal and policy guidelines for governmental agencies as duty-bearers for their actions from above are addressed. The actions of NGOs from below are also contemplated, which includes the developments around the women's movement in the former Netherlands Antilles. The significance of women's rights for the advancement of women as rights holders and the effectuation of the Women's Convention starting from the gender-based equality principle is taken into account.

The enforcement of women's (human) rights and the mainstreaming of a gender perspective in the national policy by the Executive, with the contribution and support of NGOs as actors from below, are considered. The role and responsibilities of the (governmental) institutions from above in the effectuation of the obligations set out in Article 5 Women's Convention, which suggests the transformation of harmful social and cultural patterns of conduct, is included as well. The scrutiny of a selection of provisions of the family law of Curaçao on Article 16 Women's Convention as an assessment for the establishment of the level of conformity of domestic law with international norms laid down in the Women's Convention is undertaken.

The main challenge of this study, which may have an influence on the various findings, is the lack of available (governmental) information and documentation with regard to several important gender and women's issues in Curaçao. This shortcoming is related to the fact that many events, decisions and policy directions were not, or at least not properly, documented and recorded. Moreover, the contribution and collaboration of several governmental institutions, NGOs and individuals were in many cases deficient. Nonetheless, I strongly contend that the findings will prove to be of sufficient relevancy for every organisation or person concerned with and involved in the protection and strengthening of the most fundamental rights and freedoms of local women.

§ 1.6 Motivation for this research

It is almost on a daily basis that I am confronted with the ill-treatment, oppression and injustice that we as Curaçaoan women experience. Actually, the discrimination that vulnerable

social groups like children, women, disabled people, the elderly and migrants suffer is very disturbing. The everyday struggle of many people living on this island is breathtaking. As a matter of fact, we all have relatives or friends living in deplorable conditions or in situations of deprivation, whether we want to admit it or not.

'*Dushi Kòrsou*'⁴⁵ as part of the Kingdom, may be seen by many as an island with a high standard of living due to its high income per capita, yet the (extreme) poverty, exclusion and deprivation under which a significant part of the population is living show the contrary. A closer look reveals the realities of contemporary Curaçao; the struggle for survival in which many local people, particularly (single) women with children, are engaged is overwhelming.

It is difficult for me to give a well-delineated number of challenges which we as women confront as we do not constitute a homogeneous group. We can be divided into many subgroups based on our race/ethnicity (skin colour), age, level of education, nationality (locals or migrants), social class, sexual preference, marital status etc. The exploitation and oppression we experience present themselves in every social area though. Issues of exploitation in the labour market, gender-based violence, teenage pregnancy, (extreme) poverty, lack of education, financial resources and gender-sensitive health care for (elderly) women are some of the concerns.

The ill-treatment that we endure in the labour market is most worrisome. Many of us do not earn enough to care for our basic needs and those of our children. It is very saddening to hear of and see on the radio, television, social media, as a (board) member of societal organisations (NGOs), from friends and relatives or from the women themselves, cases where women work from dawn to dark in groceries and department stores, on holidays and Sundays, receiving meagre payment to make ends meet, often leaving their children uncared for. Others work as underpaid domestic workers, or are on welfare with no real prospects; these women often live in inferior or overcrowded homes. A sub-culture of poverty and backwardness is hereby (un)consciously kept in place and transferred from generation to generation. Many others are abandoned or cheated on by their spouses and they are unable to support, emotionally or financially, their children and themselves.

Well-educated women like me, on the other hand, have to struggle and make huge personal sacrifices to make a decent career, and we do not always obtain the expected results or succeed. The middle class women who do 'make' it have a tendency to forget their (grassroots) sisters and create a life according to Western and male-dominated standards. The educational and governmental support systems are deficient; consequently, these institutions cannot cope with the demands and challenges which (young) women confront in a male-dominated and internally divided society with internalised discriminatory patterns of conduct.

The hardship, ill-treatment, injustice and (sexual and psychological) violence we endure from our employers, spouses, male family members and acquaintances start from a young age. Accordingly, the self-esteem and self-image of the Curaçaoan female are low, particularly among black women, as the colour of our complexion, hair texture and social class partly determine the treatment we receive. For survival and out of necessity we are often forced to engage with and accept ill-treatment and injustice from relatives and third parties.

45 This means literally 'Sweet Curaçao' [translation by A.R.].

So, in my perception, local women as a group, contrary to what many people think, do not have a strong voice or the courage to act against the discrimination and oppression they experience, due to many factors, such as their lack of knowledge, financial means, connections and other socio-cultural factors. Gender stereotypes and fixed parental roles affect our lives without us being (fully) aware of it. We are strong only in the sense that we live and survive under hard life-conditions.

It is within this context and reality that I was convinced that research on the position and the empowerment of local women had to be undertaken. To my knowledge this has not yet been carried out in an extensive and comprehensive way, where women as rights-claimers, the State as duty-bearer and the NGOs are made aware of their rights and obligations and given some levers to effectuate the fundamental rights of women in accordance with the international norms and standards enshrined in the Women's Convention.

§ 1.7 The structure of the book

This first chapter comprises the general introduction, which contains the central question and the main points of focus of the study. The central question is handled through the subsidiary questions as formulated above. The main points of focus of the investigation were thereafter set out.

Chapter 2 includes a comprehensive description of the historical, socio-economic and political context of Curaçao. The main goal of this chapter is to draw a picture of the societal processes which have formed and transformed the society of Curaçao in general and gender constructs in particular. The developments and the concepts behind human rights law and particularly on the fundamental rights and freedoms of women are discussed in Chapter 3. A selection of the most relevant approaches on human rights law is exhibited. The essence of the women's movement which led to the adoption of the Women's Convention is also included. In this context, the most relevant mainstreams are mentioned. Attention is paid to the different feminist approaches, which give more insight into the overall struggle for women's rights.

The impact of the international women's movement on the development of the women's movement in Curaçao follows in Chapter 4. In this chapter the most relevant events, like the establishment of the Federal Bureau of Women's Affairs and Humanitarian Affairs, of NGOs like the Women's Development Centre (SEDA), of the local Bureau of Women's Affairs and their participation at international World Women's conferences and forums are pointed out. These three chapters comprise the first part of this book, which contains the general (social and legal) parameters for the framework as presented.

The second part, in its turn, includes the framework and the elements required for the promotion, respect and fulfilment of women's rights at country level which are discussed and reviewed and placed in the designed framework. So, in Chapter 5 a conceptual framework for the incorporation of human rights principles and standards in the development of policy and programmes of the Government for the advancement of women is presented.

In Chapter 6 the legal structure concerning the relationship between international law and the domestic law of Curaçao is addressed. This system ascertains the protection that is offered to the inhabitants. For a proper understanding of this system some aspects of the

legal structure(s) valid in the former Netherlands Antilles and the Netherlands are briefly described as well. Remarks on the review competence of the judiciary are also included.

The equality and non-discrimination norms valid in Curaçao are examined in Chapter 7. The meaning and scope of gender-sensitive legal norms of non-discrimination and equality which forms the essence of the Women's Convention is the main focal point here. Thus domestic and international equality and non-discrimination norms are analysed. Judicial review of domestic law on the equality and non-discrimination norms stipulated in, inter alia, Article 26 ICCPR and Article 14 ECHR for the accomplishment of equality among men and women in Curaçao, is contemplated as well.

Chapter 8 scrutinises State accountability regarding the status of the national machinery and the development and implementation of a gender policy by the Executive and other actors, such as NGOs, benefiting women. For a proper understanding of this, a brief explanation is given of the national machinery of the former Netherlands Antilles and the gender policy that was effectuated until 2010.

An examination of the scope and meaning of Article 5 Women's Convention, exhibiting the necessity for the transformation of gender-perceptions and fixed parental roles in Curaçaoan society, is presented. The possible effects of the systematic discrimination against local women on different areas as a result of wrongful social and cultural stereotyped ideas and perceptions on gender roles are addressed in Chapter 9. The chapter thus contains an analysis of the understanding of discriminatory gender stereotypes and fixed parental roles that help to maintain inequality between the genders in this particular society. The influence of societal institutions, such as education and labour, on gender roles and gender stereotypes are commented on.

Several provisions of the family law of Curaçao are looked into in Chapter 10. Whether or not the selected legal measures of Book 1 of the Civil Code correlate with international (human rights) norms and standards is investigated. The actual application of these legal measures, which determine the legal position of women in the private sphere, is addressed. Article 16 Women's Convention, which entails the obligation for State-parties to introduce (legal) measures to bring about equal rights for women in the private domain, forms the basis for this scrutiny.

Chapter 11 gives a summarised analysis of the periodic reports submitted by the former Netherlands Antilles and the concluding comments of the Committee on these reports. Through this the obligations and duties stipulated by the Committee for the national Government and its agencies become clear. Also the application and meaning of the other supervisory instruments of the Committee are addressed, which includes a consideration of the case law of the Committee on the realisation of the rights and obligations under, inter alia, Articles 5 and 16 Women's Convention.

The final chapter contains a synthesis of the previous chapters and the concluding findings, providing an answer to the central questions of this research project, setting out from the framework developed. Finally, constructive recommendations for the strengthening of the domestic promotion and protection system of women's (human) rights are presented.

Chapter 2

A SOCIO-ECONOMIC AND HISTORICAL VIEW OF THE CURAÇAOAN SOCIETY AND ITS WOMEN

§ 2.1 Introduction

The colonial past of Curaçao has left a deep mark on its people. So, research on the position of local women and gender-relations requires an assessment of the historical, governmental and socio-economic background of this Caribbean island.

Until 2010 Curaçao formed part of the former Netherlands Antilles which consisted of five islands. These islands were colonised by different Western European powers¹ throughout their history. They have been a Dutch colony since 1634.² The institution of slavery was introduced by the Dutch, an institution which was legally abolished in 1863. It was only with the proclamation of the Charter in 1954 that the former Netherlands Antilles, of which the island territory of Curaçao formed a part, became a self-governing territory within the Kingdom. This event put an official end to the Dutch colonial period in this hemisphere.

For a better understanding of imperialism, colonisation and their influences on the position of the main ethnic groups in Curaçao, a description of the Dutch colonial period, colonial socio-cultural constructs, slavery and the emancipation³ of the enslaved people is fundamental. The interaction between the ethnic groups and its effect on gender-relations are inevitably founded in this context. I am of the view that the influences of race and ethnicity, and the unequal power-relations developed throughout the slavery and colonialism era, have determined the treatment which members of the various ethnic groups receive and have shaped gender-relations in contemporary Curaçao. The socio-economic and political mechanisms which govern this complex society become evident during this research as well.

So, the period from Curaçao's discovery in 1499 by the Spanish up until the occupation by the Netherlands in 1634 is shortly addressed in § 2.2. A description of the political and governmental developments from the Dutch colonial period until the dissolution of the former Netherlands Antilles in 2010 is given in § 2.3. Socio-economic developments between 1634 and 1915 in relation to ethnicity are described in § 2.4. The modernisation process introduced by the Royal Dutch Shell Oil Company and other important events after that, such as the revolt of 30 May 1969, are looked at in § 2.5 and § 2.6. In § 2.7 attention is paid to the role of religion in the socio-cultural development of the Curaçaoan people. Afterwards attention is focused in § 2.8 on the historical background of the types of relationships

1 These islands were subsequently occupied by Spain, the Netherlands, Great Britain and France.

2 The Leeward Islands, Aruba, Bonaire and Curaçao were occupied in 1634. The Windward Islands, Saba, Sint Eustatius and Sint Maarten were occupied by the Netherlands in 1631.

3 The concept of emancipation means here the legal liberation of the enslaved people.

and the family structures in Curaçaoan society. The historical backdrop to the position of women and gender-relations is provided in § 2.9. The chapter ends with a conclusion on those described historical and socio-economic events.

§ 2.2 The colonial period: from discovery until occupation by the Dutch (1499-1634)

Ever since the discovery of the Leeward Islands by the Spanish in 1499, these Caribbean islands have been part of European colonial history.⁴ Amerigo Vespucci was the first person who wrote about these islands.⁵ I can be very brief about this period, as little information was recorded about it. According to historical sources, the first inhabitants of these islands were Indians from the mainland. Many of them were captured and transported to Hispaniola⁶ to work on the Spanish ‘*encomiendas*’⁷ as slaves. The Spanish lost interest in these islands after several unsuccessful attempts to develop especially the island of Curaçao into a profitable colony in the sixteenth century.⁸ By the time that the Leeward Islands were seized by the Dutch from the Spanish in 1634, there were just a small group of Spanish and a couple of hundred Indians living on the islands.⁹ The influence of this part of the colonial history is rarely detectable in contemporary Curaçao society.¹⁰

§ 2.3 Political and governmental structure in historical perspective

Contemporary Curaçaoan society was formed by the effects of the colonisation by the Netherlands from 1634 and the developments that followed afterwards. The Dutch experience in the Caribbean started with the war¹¹ between Spain and the Netherlands and their quest for salt.¹² After occupation, a special trade company¹³ received privileges and public powers

4 The actual discoverer of the six islands has never been clearly established. Hartog 1961, pp. 35-40; Abraham-van der Mark 1973, pp. 2-3.

5 The Leeward Islands were called ‘*Las islas de los Gigantes*’, due to the fact that, at the time of their discovery, the islands were inhabited by giant Indians. They became Spanish territories and in 1513 were proclaimed ‘*Las islas inútiles*’ (the useless islands), due to their lack of natural resources and their unsuitability for plantations. See e.g. Hoetink 1958, p. 6; Hartog 1961, pp. 29, 37, 49; Gibbes, Römer-Kenepa & Scriwanek 1999, pp. 18, 25.

6 This territory is nowadays known as Haiti and the Dominican Republic.

7 ‘*Encomiendas*’ were a legal system of grants introduced by the Spanish. The Indians were forced to perform statutory labour for the protection of their master. Hartog 1961, p. 55.

8 Römer 1998, pp. 9-14.

9 The Spaniard, Juan Ampues became interested in these islands and in 1526 got the permission of King Carl V to establish an ‘*encomienda*’ in the Leeward Islands. The Indians were recruited from the mainland and converted to Catholicism. The genocide of the Indians of the Americas by Western colonisers is generally recognised. See e.g. Hartog 1961, pp. 51-55; Kunst 1981, pp. 171-173; Van der Dijns 2011, pp. 24-30.

10 Hartog 1976, pp. 16-19; Dalhuis e.a. 1997, p. 35.

11 This war, which was the result of a religious dispute and for independence, was between the Dutch Protestants and the Spanish Catholic Crown and lasted 80 years from 1568 until 1648. The signing of the peace treaty of Munster between the Spanish and the Dutch ended it. For more details see e.g. Kunst 1981, p. 41; Daal & Schouten 1992, p. 31; Van der Pot/ Elzinga, de Lange & Hoogers 2014, pp. 129-133.

12 The Dutch broke the Spanish monopoly in the Caribbean and by doing so they got access to several additional sources of salt.

13 The private company, the West India Trade Company, had the monopoly in the slave trade.

based on a contract¹⁴ from the Government of the Netherlands¹⁵ to rule the colonies in the West. Based on the need for a cheap labour force and the occupation of territories in Brazil,¹⁶ the Dutch became, through the West India Trade Company, involved in the transatlantic slave trade. After the war with Spain and the loss of the Brazilian territories in 1654, the island of Curaçao with its highly strategic position and natural harbour became one of the major slave trade centres of the Western hemisphere for the Dutch.¹⁷ The island was transformed into a centre of legal and illicit commercial exchanges for the Caribbean area and the Spanish colonies in Latin America, as it was unsuitable as a profitable plantation-colony due to the harsh climatic conditions. The inter-imperial trade took place based on the '*asiento*'¹⁸ contracts.

The Dutch territories in the Antilles, consisting of the colony of Curaçao and the colony of Sint Eustatius,¹⁹ each had their own regulations under the supervision of different public institutes of the West India Trade Company.²⁰ Economic interests and profits prevailed, while issues like the common interests of the colonists and the rights of the inhabitants were not of any concern. The general slave trade and (illicit) inter-imperial trade flourished mostly from 1675 until 1713, after the island was declared a free port by the company.²¹

The eventual withdrawal of the company from the international slave trade arena in 1792, due to disappointing profits, was not caused by an emancipation perspective, but by an economic one. The trade became too expensive. It was continued thereafter by local private enterprises.²²

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- 14 This contract gave sole authorisation to the company to govern the colonies, to exploit the new lands and people and to engage in the slave trade. See e.g. Verdon 1977, p. 14; Kunst 1981, p. 47; Aller 1994, pp. 28, 51.
- 15 This was the States-General of the Republic of the United Netherlands. The company was subordinated to the States-General, but it was a public institution in itself. See e.g. Schiltkamp 1969, p. 119; Verdon 1977, p. 17; Van der Pot/ Elzinga & de Lange 2014, pp. 124-126.
- 16 The First West India Company occupied a part of North-Eastern Brazil (Recife), a Portuguese colony, from 1624 till 1654. Hoetink 1958, p. 35.
- 17 Daal & Schouten 1992, p. 55; Rupert 2006, pp. 25-39.
- 18 '*Asientos*' were exclusive public contracts between a (Dutch) provider of slaves and a private Spanish trading company for the delivery of slaves to the Spanish West-India colonies. The Spanish company had a monopoly authorised by the Spanish crown. See e.g. Hoetink 1958, pp. 10-11, 35, 67; Hartog 1969, p. 435; Kunst 1981, pp. 30, 125; Rupert 2006, p. 37.
- 19 The Dutch territories in the New World were the colonies of Curaçao, Sint Eustatius, Surinam and New Netherlands. The territory of Curaçao consisted of the islands of Curaçao, Bonaire and Aruba. The colony of Sint Eustatius consisted of the islands of Sint Eustatius, Saba and Sint Maarten. Surinam had been a Dutch territory in the South American continent since 1667. New Netherlands was lost to the English in 1664. Schiltkamp 1969, pp. 124-132.
- 20 The colony of Curaçao had been governed by a Director and the colony of Sint Eustatius by a Commandant since 1632.
- 21 Verdon 1977, p. 16; Rupert 2006, pp. 37-38.
- 22 The First West India Trade Company ceased to exist in 1674. Its activities continued under the Second West India Trade Company. Paula and Hartog believe that the main cause for the losses of the Company was related to the protection of personal interests and profits, the ending of the Spanish Succession War in 1714 and most of all the competition from English trade companies. The company filed for bankruptcy in 1792. See e.g. Hartog 1961, p. 444; Paula 1972, pp. 22-23; Kunst 1981, pp. 83-102, 125; Van Aller 1994, p. 80.

§ 2.3.1 *Legal and governmental structure in the colonial period 1634-1816*

The public competences of the West India Trade Company were specified in a regulation,²³ which granted the company the executive, legislative and judicial powers in the Dutch colonies in the West. This particular law formed the foundation of the existing concordance of law²⁴ systems within the Kingdom. By then the seventeenth and eighteenth century Dutch law system was applicable in all the colonies and the old Roman law system was the complementary law system in those cases where the Dutch system did not contain specific legal provisions for the colonies. The Instructions for the Director or Commander contained more specific rules and regulations on the rights of the inhabitants of each colony. The Director or Commander of the West India Trade Company, as the highest public figure, executed his authority in the name of the Dutch Parliament and the Company.²⁵

§ 2.3.2 *Governmental structure in the colonial period 1816-1863*

Several governmental and constitutional decisions taken in the Netherlands in the course of time had (in)directly a reflection and impact in the colonies. Some of these events were, inter alia, (1) the unification of the six islands in 1845, (2) the limitation of the authority of the King of the Netherlands in regard to the affairs of the colonies in 1848 and (3) the abolition of the slave trade in 1814 and of slavery in 1863.

With the withdrawal of the company in 1792, the administration of the colonies came under the direct supervision of the organs of the Dutch State. Despite the (liberal) constitutional developments which the Netherlands went through in the late eighteenth and early nineteenth centuries, like the establishment of the Dutch Batavian Republic and afterwards of the Kingdom of the Netherlands, a centralised and autocratic administration was maintained in the colonies.²⁶

After the so-called time of confusion²⁷ and the proclamation of the Kingdom in 1815, the administration of the two island colonies came directly under the rule of the King, who had exclusive legislative and executive powers in the colonies. The exclusive authority in regard to colonial profits was first constitutionally limited in 1840 due to excessive expenditure.²⁸ The introduction of the parliamentary system in 1848, whereby the Ministers became accountable to Parliament for all the actions of the King, introduced further limitations.²⁹ By 1887 the legislative competence of the Executive of the Netherlands on the colonies was again limited, this time by the reform of the Constitution of the Netherlands.

The limitations on the exclusive authority of the executive power in the Netherlands did not have any direct effect on the participation of local people in the colonial administration

23 This regulation is known as the '*Orde der Regieringe 1629*'. The 'Patent of 1621' was considered the constitution and the '*Orde der Regieringe 1629*' was the specification of this constitutional regulation. Schiltkamp 1969, pp. 119-120; Kunst 1981, p. 57.

24 For an appreciation of this principle see Lewin 2009, pp. 25-27.

25 For more details see Schiltkamp 1969, pp. 123-140.

26 Van Aller 1994, pp. 86-87; Besselink 2011, p. 1.

27 During this period that covered 1795-1813 the Netherlands was a protectorate of and occupied by the French. The colonies came under Dutch and French ruling. They were, at some point in time, also occupied by Great Britain.

28 Kunst 1981, pp. 243-244.

29 Van Aller 1994, pp. 91-92.

though. The colonies were ruled by Dutch public institutions through Dutch representatives, particularly the Governor.³⁰ This public office³¹ was introduced in 1815 with the enactment of new by-laws for the Dutch West Indies colonies. Its administrative authority in the colony of Curaçao was legally established in the by-laws of 1848. All issues of public importance had to be addressed by or through the Governor.³² After 1815 each colony obtained its own local Governmental Regulations.³³ After the failure³⁴ of the unification of the administration of the three Dutch West Indies territories in 1828, seated in Surinam,³⁵ this attempt of unification was aborted in 1845. From then on the colony of Curaçao and its dependencies, consisting of six islands, came into existence.³⁶

§ 2.3.3 *The quest for political autonomy 1863-1954*

During the period 1863-1954 the colony was under the effective authority of the State-Government of the Netherlands. This foreign institution held power through the Governor. The General Governmental Regulation of 1865 was the first sort of State-regulation for the colony of Curaçao which provided certain autonomy to the territory. With its enactment some citizenship rights³⁷ and two important public institutions for self-government were installed, namely the Executive Council and the Colonial Council. The Executive Council was the advisory body for the Governor. The Colonial Council became the co-legislative body. These public institutions together with the Governor were in charge of the proclamation of decrees and laws. This was known as substitute autonomy, because no real self-government in the territories came about. The officials were all appointed by the King and not elected by the local people. Moreover, several legal instruments were given to the Netherlands making its interference in domestic affairs possible.³⁸

Limited voting rights were not introduced in the colony of Curaçao in 1865, unlike the colony of Surinam. It was only with the adoption of the constitution of the Netherlands of 1922³⁹ that the installation of a representative organ chosen by the local population of the Dutch territories became statutorily possible.⁴⁰ With the proclamation of the ‘Curaçaoan State-Regulation of 1936’ limited voting rights were introduced and a representative

30 Van Rijn 1999, p. 27.

31 For a historical recollection of the Governors since 1815, see Oostindie (red.) 2011.

32 See e.g. Hartog 1961, pp. 543, 646-648, 720; Kunst 1981, pp. 240-243; Van Aller 1994, p. 102; Rogier 1999, p. 70; Van Rijn 1999, p. 225.

33 Kunst 1981, p. 238; Van Aller 1994, p. 87.

34 The failure of this unification was due to disappointing financial benefits and executive results.

35 See e.g. Hartog 1961, p. 719; Kunst 1981, p. 240; Van Aller 1994, pp. 94-99; Van Rijn 1999, p. 27.

36 Hartog 1961, p. 651; Kunst 1981, p. 241.

37 See Art. 4 (equal rights), Art. 8 (freedom of the press), Art. 10 (freedom of assembly) General Governmental Regulation 1865.

38 Several provisions contained supervision measures, such as Arts. 49 and 50 General Governmental Regulation 1865 (P.B. 1865, no. 18). See e.g. Kasteel 1956, p. 13; Van Aller 1994, pp. 141-148, 176; Van Rijn 1999, pp. 28-29.

39 A Dutch State-Commission was installed with the task of coming up with suggestions for a new structure for the colonies based on this adoption. For these suggestions see Van Aller 1994, p. 179.

40 The limited voting right was introduced in 1848 in the Netherlands. The colony of Surinam obtained a partially elected co-legislative organ therewith. This was not granted to the colony of Curaçao, based on the positioning of its own colonial government; this led to criticism locally. See e.g. Kasteel 1956, pp. 19-25; Van Rijn 1999, p. 29; Van der Pot/Elzinga, de Lange & Hoogers 2014, pp. 328-329.

institution partially chosen by the population.⁴¹ In effect, however, only a (legally) selected group of male citizens could exercise this right.⁴² The first elections took place in 1937.⁴³ The main argument against universal suffrage back then was that the local Afro-Curaçaoan people were not ready for and aware of the significance of this political right. Only a few people such as Dr M da Costa Gomez⁴⁴ had a progressive opinion on this matter.⁴⁵

Besides limited voting rights, the States-Regulation of 1936 contained a framework for the introduction of self-government in each island territory. The guarantee of certain civil or political rights was not of any importance or concern for the development of the people of this territory at that point in time. Parliamentary democracy was not completely introduced either. The colonial structure was kept in place, which meant political subordination of the local authorities to the State-Government of the Netherlands through the Governor.

The demands for self determination and democracy in the former colonies were initiated during and just after World War II. The occupation of the Netherlands by the Germans in the 1940s and the prosperity from industrialisation⁴⁶ in the 1930s and the 1940s, led to an economically and politically independent attitude locally. The population went through a process of political awareness, which led to demands for more influence in their own Government. With the famous speech of Queen Wilhelmina in 1942, which contained the declaration for granting more autonomy to the Dutch territories overseas by the Netherlands, the process of political reform commenced.⁴⁷ The relationship between the Netherlands and its territories became one of voluntary association and self-government in internal affairs.⁴⁸

The new structure for the Kingdom was introduced in 1954. Prior to this, the adoption of the State-regulation of Curaçao in 1948⁴⁹ did not bring about any real self governing mechanisms. Several meaningful constitutional reforms were announced, such as the replacement of the Executive Council by the College of General Administration, which was

41 The 'Wet op de Staatsinrichting van Curaçao', known as the 'Curaçaoose Staatsregeling' of 1936 (P.B. 1936, no. 105) replaced the 'General governmental Regulation of 1865'. The Colonial Council was replaced by the Parliament. Ten of the then fifteen members were directly chosen by the local people based on the limited capacity voting right. The rest were appointed by the Governor.

42 According to Arts. 69 and 71 State-regulation of colony Curaçao 1936, only male inhabitants who could meet the conditions obtained the active and passive voting right. The conditions were: (1) the person had to have Dutch nationality; (2) he had to be 25 years of age or older; (3) he had to have a certain level of income; and (4) he had to have a certain degree of education. Women who met these conditions had passive voting rights. Effectively, only 6% of the population met these conditions. See Kasteel 1956, pp. 35-46; Verton 1977, p. 43; Van Rijn 1999, p. 30.

43 The institution of the Parliament and its 75 years of existence were commemorated in 2013. See Wit 2013, pp. 3-19.

44 For an elaboration on the significance of the struggle of Dr M da Costa Gomez for the political awareness of the Antillean, i.e. Curaçao, people, see Pieters Kwiers 1991; see also de Lannoy-Berg 2000.

45 Kasteel 1956, pp. 37-41.

46 The Royal Shell Oil Company established itself in 1915 in Curaçao and the Lago Oil Refinery in 1924 in Aruba. These refineries played an important strategic role during World War II. They became important suppliers of fuel for the Allied forces. For more details see Kasteel 1956, pp. 56-59; Verton 1997, pp. 155-156.

47 This speech was made on 6 December 1942 in London as the Government of the Netherlands was in exile in Great Britain. Kasteel 1956, pp. 59-62.

48 Actually this political structure was made possible due to and after the fight for ultimate self-determination by the colony of Indonesia and the signing of the Charter of the United Nations by the Netherlands in 1945, in which the right of self-determination of their colonies was recognised. Pieters-Kwiers 1991, pp. 74-90; Hillebrink 2008, pp. 3-46.

49 Kasteel 1956, pp. 182-189; P.B. 1948, no. 71.

accountable for its actions to Parliament, and the introduction of general voting rights. The Governor maintained his position of power in regard to the general administration.⁵⁰

The real breakthrough in the democratic and political process took place in 1951 with the proclamation of the Interim Regulation.⁵¹ This regulation enhanced temporary measures in regard to the new structure for the Kingdom consisting of three autonomous countries, each with their own constitution and jurisdictions.⁵² In that same year the decentralisation of powers within the then future autonomous country of the Netherlands Antilles was also formalised, with the coming into force of the Insular Regulation of the Netherlands Antilles (ERNA).⁵³ The competency of the individual islands within the Netherlands Antilles was formalised. Each island territory obtained its own administration consisting of an Island Council,⁵⁴ an Executive Board⁵⁵ and the Lieutenant Governor in accordance with Article 3 Insular Regulation. The proclamation of the Kingdom took place in 1954,⁵⁶ with the enactment of the Charter.

The three countries within the Kingdom became 'equal'⁵⁷ partners in a voluntary association with a moral obligation to sustain each other when and if necessary.⁵⁸ The Netherlands Antilles as an autonomous country obtained its own constitution and jurisdiction, although limited, within the Kingdom. Through the Constitution of 1955 the essential organs for democracy and (human) civil rights were institutionalised.⁵⁹ The Netherlands Antilles consisted of six relatively autonomous island territories based on the Insular Regulation of the Netherlands Antilles (ERNA) and the Constitution of the Netherlands Antilles of 1955.

§ 2.3.4 *Governmental developments during the period 1954-1993*

The Kingdom that came into being had three levels of administration and regulations, which were the Kingdom level, the federal level and the local level. This meant that governmental institutions of the Kingdom introduced legislation and measures based on the Charter which

50 See e.g. Verdonk 1977, p. 46; Aller 1994, p. 239; Van Rijn 1999, p. 3; Rogier 1999, pp. 17-18.

51 The Interim Regulation was partially introduced in 1950 and 1951 (Stb. 1950, no. K. 419; P.B. 1950, no. 110; P.B. 1951, no. 27). For the most important historical details on this matter see Kasteel 1956, pp. 217-239; Aller 1994, pp. 249-252.

52 The three countries were: The Netherlands, Surinam and the Netherlands Antilles.

53 The Insular Regulation of the Netherlands Antilles of 1951 (P.B. 1951, no. 39).

54 The Island Council of Curaçao consisted of 21 members chosen by the inhabitants for a period of 4 years, pursuant to Arts. 3-6 in conjunction with Art. 16 Island Regulation (ERNA).

55 The Executive Board was formed of a maximum of seven deputies and the Lieutenant Governor pursuant to Art. 47 Island Regulation (ERNA).

56 The Proclamation of the establishment of the new constellation of the Kingdom, 29 December 1954 (Stb. 1954, no. 596; P.B. 1954, no. 121).

57 The countries in the West were in no sense equal partners and certainly not with the Netherlands. There were fundamental differences related to the size of the countries, on the areas of economic and social development, and also in political sense (awareness). It is merely an illusive and unrealistic construct between (former) colonised countries and their (former) coloniser. For a recent study on the unequal position of, and power-relations between the Caribbean countries on the one hand and the Netherlands on the other hand, as expressed during the process of the constitutional reforms and the enactment of the consensus-Kingdom's Acts of 2010, see Broekhuijsen 2012.

58 The Preamble of the Charter (Stb. 1954, no. 503); Pieters Kwiers 1991, pp. 119-131.

59 This was the '*Staatsregeling van de Nederlandse Antillen*' of 1955. See Stb. 1955, 136; P.B. 1955, no. 32.

were applicable in the entire realm, including the island territory of Curaçao.⁶⁰ The federal branches of Government of the Netherlands Antilles enforced national, i.e. federal, laws and policies for the six island territories starting with the Constitution of the Netherlands Antilles.⁶¹ And at a local level, governmental institutions, in accordance with the Insular Regulation of the Netherlands Antilles (ERNA), introduced legal measures and policies which were only binding on the inhabitants of the respective island territory.⁶² With the final dissolution of the former Netherlands Antilles by 2010, the federal governmental level was eliminated.

I have to note though, that prior to this event, and after the establishment of the Kingdom in 1954, the permanent quest for separation of the island territory of Aruba, particularly from Curaçao where the federal administration was seated, ceased temporarily. The new structure brought some relief in this matter, but it did not provide sufficient autonomous instruments for the individual islands.⁶³ The revolt of 30 May 1969 rekindled and aggravated this quest. The revolt itself did not bring about changes in the constitutional structure; it merely had consequences for the socio-political structure.⁶⁴

The Netherlands altered its policy towards the colonies afterwards and it developed a decolonisation policy with the main objective of granting a full right of self-determination to the countries in the West. Based on this, Surinam obtained its independence in 1975.⁶⁵ Aruba restarted its campaign for separation in that same period, as it did not want to be part of the Netherlands Antilles in a possible independent State. In 1986 it obtained its status of self-governing country within the Kingdom.⁶⁶ From 1986 to 2010 the Netherlands Antilles consisted of five islands and the Kingdom of three countries.

According to Van Rijn the separation of Aruba from the Netherlands Antilles was conducive to the further disintegration of the Netherlands Antilles. The main reasons were (1) the artificial foundation of the Netherlands Antilles, (2) the lack of nation building, (3) the perception that the national Government is simply a continuation of the Dutch colonial administration and (4) a lack of national solidarity and equality among the islands.⁶⁷ This view was also endorsed by Lourens.⁶⁸ Thus, the eventual political disintegration of the Netherlands Antilles became inevitable.

60 Article 3 Charter in conjunction with Art. 14 Charter.

61 See e.g. Arts. 18 and 67 Constitution Netherlands Antilles.

62 Articles 1, 2 and 2a Insular Regulation (ERNA).

63 The quest for separation of Aruba had already started in the 1930s. Pieter Kwiers 1991, pp. 74-83; the recognition by the Netherlands of the right of self-determination of each island took place after the Round Table Conferences of 1981 and 1983 after much resistance. Aruba (and also the other Island territories afterwards) was therewith able to obtain its separate status within the Kingdom.

64 See e.g. Kasteel 1956, pp. 157-167, 271-276; Van Aller 1994, pp. 363-368; Van Rijn 1999, pp. 32-38.

65 Van Aller 1994, pp. 324-334, 355-356; Hillebrink 2008, pp. 175-178.

66 The Kingdom had consisted since 1986 of the Netherlands, the Netherlands Antilles and Aruba. Aruba obtained its status under the condition that it would become independent in 1996. The Netherlands viewed this as prevention for the further fragmentation of the former Netherlands Antilles. However, in 1993 it reconsidered its position and it withdrew this condition, allowing Aruba to remain in the Kingdom as a self governing country indefinitely. See e.g. Van Aller 1994, pp. 369-410; Van Rijn 1999, pp. 52-56; Hillebrink 2008; Borman 2012, pp. 10-11.

67 Van Rijn 1999, p. 39.

68 Lourens 2004.

§ 2.3.5 Governmental developments during 1993-2010

During 1993 and 1994 referenda⁶⁹ were held on the five islands based on the rights of self determination of their people. The people chose back then the preservation of the Netherlands Antilles. Several proposals were formulated for the restructuring of the Netherlands Antilles.⁷⁰ This progress stagnated due to political unwillingness and a lack of courage. By 1998 the opinion among the people changed, and they favoured a separate status for Curaçao in the Kingdom.⁷¹ After almost two decades the inevitable fragmentation of the country could no longer be postponed. Referenda were again held between 2000 and 2005 and the people of the islands, with the exception of Sint Eustatius, chose a new constitutional structure which meant the total disintegration of the country called the Netherlands Antilles.⁷² The restructuring of the Kingdom became an urgent necessity to further the fundamental right of self-determination of the people of islands.⁷³

However, prior to its own referendum held in 2005, the new constitutional framework for Curaçao, was already set out in 2004 in the controversial Jessurun Report.⁷⁴ This report contained the preliminary basis for the new Kingdom. More cooperation between the partners within the Kingdom, which implied (in)direct involvement of the Kingdom (in other words, the Netherlands) in the internal affairs of the then future new autonomous countries, was suggested.⁷⁵

After the referenda the necessary negotiations and conferences commenced. One of the main points of discussion and concern was the connection placed between the financial reconstruction of the debts of the countries concerned and the new governmental position of Curaçao (and Sint Maarten) within the Kingdom. The Netherlands stipulated several financial conditions in regards to the restructuring of public finances for the obtaining of the new status by Curaçao.⁷⁶ The foundation for an autonomous status for Curaçao was finally agreed upon

69 Referenda were held in 1993 in Curaçao and in 1994 in the Windward Islands and Bonaire. Van Rijn 1999, pp. 41-42; Hillebrink 2008, pp. 257-258.

70 'Make it work Model voor een geherstructureerd Nederlands-Antilliaans staatsverband', De Landelijke Commissie Herstructurering, de Nederlandse Antillen, juli 1995, pp. 102-111; Bongenaar 1996.

71 A survey conducted on the type of relationship which the inhabitants of the island would like to have with the Netherlands revealed that the majority of the population of the former Netherlands Antilles favoured (closer) relations with the Netherlands. Oostindie & Verton 1998.

72 The first referendum was held in Sint Maarten on 23 June 2000. Its people opted for the status of an autonomous country within the Kingdom. Bonaire held its referendum on 10 September 2004, when its population chose for a direct or close relationship with the Netherlands. The island territory of Saba chose on 5 November 2004 for total integration in the Dutch constitutional structure. The referenda in Curaçao and Sint Eustatius were held simultaneously on 8 April 2005, when the people of Curaçao opted for the same status as Sint Maarten and only Sint Eustatius preferred the preservation of the Netherlands Antilles. 'Slotverklaring Topoverleg Staatkundig structuur', 26-27 April 2005; 'Slotverklaring Topoverleg Staatkundig structuur', 25-26 August 2005.

73 Wit 2007, pp. 205-218.

74 This report was named after the chairperson of the Committee, E A V Jessurun, appointed by the Executives of the Netherlands and the Netherlands Antilles. It was set up in March 2004 to assess the constitutional, financial and governmental challenges of the countries within the Kingdom and to suggest recommendations for the future position of the countries in the West within the realm. 'Nu kan het nu moet het: The time is now, let's do it! Awor por, ban pè!', Advies werkgroep Bestuurlijke en Financiële verhoudingen Nederlandse Antillen, 8 October 2004.

75 Ibid., pp. 9-12; for (critical) analysis of the suggestions in the report see van Rijn 2004 (a), pp. 267-277; Elzinga 2005, pp. 113-117.

76 For documentation on the negotiations between the countries for their new status within the Kingdom see e.g. 'Toekomst in zicht', Rapportage Werkgroep Voorbereiding RTC 2005, 12 Augustus 2005; 'Hoofdlijnen akkoord tussen de Nederlandse Antillen, Nederland, Curaçao, Sint Maarten, Bonaire Sint Eustatius and Saba', Bonaire,

with strict conditions stipulated by the Netherlands, and the areas in which ‘cooperation’ was most favourable and necessary were enumerated. Eventually, with the signing of the notorious⁷⁷ ‘Final Declaration’ of 2006 on the new governmental and financial structure of the self-governing country of Curaçao, the foundation for the current structure was established.⁷⁸ This meant the further involvement and supervision of the Kingdom (i.e. the Netherlands) in the internal affairs of the island, through the enactment of consensus-Kingdom’s Acts.⁷⁹ As the subsequent deadlines⁸⁰ for the dissolution of the Netherlands Antilles could not be reached in due time, the dissolution of the country was finally accomplished on 10 October 2010.⁸¹ The adaptation⁸² of the Charter took place and several new provisions⁸³ were introduced to accommodate the new structure of the two autonomous islands, Curaçao and Sint Maarten,⁸⁴

22 October 2005. ‘Slotverklaring van de start-Ronde Tafel Conferentie 26 november 2005’ Slotverklaring van de start-Ronde Tafel Conferentie van het Koninkrijk der Nederlanden, gehouden op 26 november 2005 in Willemstad, te Curaçao; see also Nehmelman 2009, pp. 38-40.

- 77 The adoption of this document led to many fundamental discussions on the future of the islands and the limitations it entailed for the autonomy of Curaçao, with the enactment of consensus-Kingdom’s Acts. The people of Curaçao became (politically and socially) deeply divided into two segments. This division is still noticeable in the politics of Curaçao. The document was first rejected by the Island Council in November 2006, which led to stagnation in the negotiation process with the Netherlands. The process continued almost a year later after the adoption of the Final Declaration of 2 November 2006 by the then new Government of the island territory. The results of the negotiations entailed the introduction of consensus-Kingdom’s Acts regulating internal affairs of the new self-governing countries. In a referendum held on 15 May 2009 a small majority of the inhabitants of Curaçao (52%) gave its approval for the new constitutional structure of Curaçao. See e.g. Decision Island Council, 30 November 2006, no. 2005/55297; Decision Island Council, 6 July 2007, no. 2007/31313 A; Decision Island Council of Curaçao, 6 July 2007, no. 2007/31313 B; ‘*Toetreding van het Eilandgebied Curaçao tot het overgangsakkoord*’. Bestuursakkoord houdend de toetreding van Curaçao tot het overgangsakkoord en houdende nadere afspraken over de inwerkingtreding van de nieuwe staatkundige verhoudingen binnen het Koninkrijk der Nederlanden n.a.v. de besluiten van de Eilandsraad van Curaçao d.d. 6 juli 2007 tot instemming met de Slotverklaring van 2 november 2006, 28 Augustus 2007.
- 78 ‘*Slotverklaring van het Bestuurlijk overleg over de toekomstige staatkundige positie van Curaçao en Sint Maarten*’, Den Haag 2 November 2006.
- 79 The consensus-Kingdom’s Acts are Kingdom’s Acts that regulate national matters that fall under the autonomous power of the countries. It was decided that in the new constellation these matters would be regulated at the Kingdom’s level. The Charter lacks any provisions on (the procedure for) the enactment of these types of Kingdom’s Acts. For contributions on the (legislative) challenges and limitations related to the effectuation of these Acts, see e.g. Van der Woude 2007 (a); Nehmelman 2009, pp. 43-46; Qoubbane 2010.
- 80 The first deadline was 1 July 2007, which was later altered to 15 December 2008. ‘*Slotverklaring van het bestuurlijk overleg over de staatkundige structuur tussen Nederland, de Nederlandse Antillen en de eilandgebieden Bonaire, Curaçao, Saba, Sint Eustatius en Sint Maarten*’, 17 September 2005; ‘*Hoofdpijnen akkoord tussen de Nederlandse Antillen, Nederland, Curaçao, Sint Maarten, Bonaire Sint Eustatius and Saba*’, Bonaire 22 October 2005.
- 81 By 10 October 2010, neither Curaçao nor Sint Maarten was fully equipped to carry out their responsibilities as autonomous countries, particularly Sint Maarten. This situation was partly caused by the limited time in which the restructuring took place. As a safety net an Order in Council by the Kingdom’s Executive was enacted, the so-called ‘*Samenwerkingsregeling waarborging plannen van aanpak landstaken Curaçao en Sint Maarten 2010*’ (Cooperation agreement safeguarding plans of action country tasks Curaçao and Sint Maarten 2010). For Curaçao it concerned plans of action for country tasks in the national Police force and penitentiary facilities. Stb. 2010, no. 344; Parliamentary report II 2011/12, 33 240 IV, no. 1, p. 14.
- 82 The proposed integral adaptation of the Charter did not take place. Only the most relevant alterations to accommodate the new countries were introduced. See e.g. Stb. 2010, no. 333; P.B. 2010, no. 54; P.B. 2010, no. 72; P.B. 2010, no. 73; for a critical take on the matter see Besselink 2011.
- 83 The most relevant new provisions are inter alia Art. 12a, Art. 27 paras. 2 and 3, Art. 38a Charter.
- 84 Article 38 para. 2 Charter formed the foundation for the five enacted consensus-Kingdom’s Acts. They are the Kingdom’s Acts on: (1) the Financial supervision on Curaçao and Sint Maarten (Stb. 2010, no. 334), (2) the Common Court of Justice of Aruba, Curaçao and Sint Maarten and the BES-islands (Stb. 2010, no. 335), (3) the Public Prosecution Service (Stb. 2010, no. 336), (4) the Police forces (Stb. 2010, no. 337), and (5) the Council of law enforcement (Stb. 2010, no. 338). It was decreed that the effectuation of these Kingdom’s Acts

and the integration of Bonaire, Sint Eustatius and Saba⁸⁵ within the Dutch constitutional structure.⁸⁶ These changes showed up in many aspects contradictions with the spirit of the 'old' Charter which had as its objective the protection of and the mutual respect for the autonomy of the self-governing countries within the Kingdom. As a matter of fact, the autonomy acquired by Curaçao (and Sint Maarten), in comparison with that of the former Netherlands Antilles and Aruba, was in many aspects limited.⁸⁷

§ 2.4 Socio-economic structures and developments between 1634-1915

It is essential to present a recollection of the most important socio-economic developments which formed Curaçaoan society, in particular the relationship between the ethnic groups that lived on this particular island prior to the industrialisation as a result of the establishment of the Royal Dutch Shell Oil Company in 1915. I address these issues in the following subparagraphs.

§ 2.4.1 *The three main ethnic groups during the colonial period 1634-1816*

Most countries in the Caribbean share a common history of occupation by European countries, colonisation, imperialism, and slavery and, consequently, the development of multi-ethnic societies. Curaçao as a part of this region shows the same traits.⁸⁸ Colonialism as a complex political phenomenon is characterised by one main principle, namely the superiority of white Europeans to the non-white natives and the enslaved.⁸⁹ In the case of Curaçao the white European colonisers were Dutch Protestants and Sephardic Jews.⁹⁰ The Indians as the non-white native inhabitants have remained a small part of the population of the island, but they were gradually forgotten and they eventually disappeared as a distinctive ethnic group in the late nineteenth century. As stated by van der Dijs '...[they were] assimilated in the broader multi-ethnic society...'⁹¹

would be evaluated after five years of their enactment in 2015. After this evaluation they could be prolonged or terminated. If the countries do not comply sufficiently with these laws, they will be (partly) prolonged. In some cases the nature of the matter (e.g. Common Court of Justice) that the Act regulates demands adjustments in the ruling, subsequently its prolongation, after the evaluation is effectuated and not its termination. See e.g. Art. 33 Kingdom's Act Financial supervision; Art. 65 Kingdom's Act Common Court of Justice; Arts. 40-41 Kingdom's Act Public Prosecution Service; Arts. 55-56 Kingdom's Act Police forces.

85 The BES-islands became a (temporary) 'public entity' within the Dutch constitutional system under Art. 134 Constitution of the Netherlands. This structure shows constitutional inconsistencies in many aspects. For contributions on the meaning and legal inconsistencies of the new position of the islands within the Kingdom, see e.g. Nehmelman 2009, pp. 40-43; Quobbane 2010; Bense & Pronk 2010; Hoogers 2010 (a); Hoogers 2010 (b); Besselink 2011; Hillebrink, Roos & Verheij 2011; Saleh 2011, pp. 22-27.

86 For an overview of the most memorable events up to 10 October 2010 from a socio-political approach see Oostindie & Klinkers 2012.

87 For more details on these limitations see Chapter 6.

88 Abraham-van der Mark 1973.

89 This system consisted of three main groups: (1) the colonised: the native inhabitants (the Indians) and the imported slaves; (2) the colonisers: the white Europeans who in search of riches established themselves in the new territories; (3) the colonising power: the colonial Government in the motherland. Verton 1977, p. 9.

90 The Dutch Protestants as the first settlers were followed by the Jews 20 years later. The Sephardic Jews came from Amsterdam where they had become established after the loss of the Brazilian territory (Recife) in 1654 as a result of its occupation by the Portuguese.

91 Van der Dijs 2011, pp. 24-35.

The Protestants formed a non-homogenous social group with a high social status. They were divided into the higher and lower Protestants. Most of them were involved in activities related to the illicit inter-imperial (slave) trade.⁹² The Jews were allowed by the Dutch Protestants to establish themselves under the condition that they engaged in agriculture through contracts given⁹³ by the West India Trade Company. As this endeavour failed due to the harsh climatic conditions of the island, the lack of cooperation of the West India Company and the lack of available resources, particularly cheap labour, they engaged in trade by the end of the seventeenth century and transformed themselves into prosperous merchants. At some point they monopolised the trade market and finally took over the economic leading role from the high Protestants.⁹⁴ The Jews formed a very homogenous social group, accomplished through social control mechanisms and a common religion.⁹⁵ The cultural and economic segregation that existed between the two white social groups was related to the threat that the Jews represented for the Protestants. Despite this, these two groups were able to live peacefully on the island for centuries.⁹⁶

The third group consisted of the imported enslaved people from mainly West Africa. A small group of slaves, which was merchandise in transit for the Latin-American continent and other Caribbean islands, remained on the island as cheap labour. These slaves became the largest ethnic group.⁹⁷ They formed a very heterogeneous group as there was a great social and ethnic diversification among them. Their social status was characterised by their complete lack of power and of citizenship and by their submission to their masters.⁹⁸ The position of the imported enslaved people and the treatment they received were characterised by three classifications: the differentiation in daily tasks and roles; the legal status; and the external (physical) features of the slaves. External (physical) features became so prominent that they were taken into account by the authorities in their treatment of the members of the group, which strengthened the development of discrimination and unequal treatment between individuals of the same ethnic group, resulting in the development of feelings of superiority of the coloured group towards the slaves and the freed slaves.⁹⁹

Effectively, the socio-economic distance between the social groups was immense. This formed the basis for the early establishment of unequal power relations.¹⁰⁰ Despite the segregation between the groups there were a great number of interracial relationships. The

92 The first group consisted of civil servants of the colonial power (Dutch West India Company), officers and governmental employees. The latter consisted of artisans, small merchants, sailors and soldiers. Hoetink was the first historian who systematically analysed and described the development of Curaçaoan society. Hoetink 1958; see also Paula 1972, p. 15; Rupert 2006, p. 40.

93 For the exact conditions and dates of the establishment of the Jews in the colony, see Hoetink 1958, p. 34; Schiltkamp 1969, pp. 140-149; Verton 1977, pp. 15, 28.

94 See e.g. Römer 1979, p. 12; Schrijs 1990, p. 13; Rupert 2006, pp. 39-41; Rupert 2007, pp. 156-157.

95 The Jews as a social group resembled a family structure. Hoetink 1957, p. 38.

96 See e.g. Hoetink 1958, pp. 41-42; Paula 1972, p. 14; Marks 1973, p. 78.

97 See e.g. Abraham-van der Mark 1973, p. 3; Römer 1979, p. 13; Kunst 1981, p. 126; Schrijs 1990, p. 135.

98 Hoetink 1957, pp. 69-72.

99 The classification by daily tasks enhanced the differentiation based on the type of work they performed, as house slaves, artisan slaves and field slaves. The house slaves were considered the privileged class because of the type of work they performed and the short distance between the superior white master and these slaves. They were familiarised with the Western culture of the upper white class, especially the female slave who in many cases had an (forced) unlawful sexual relationship with the male slave-owner. The offspring received privileged treatments, based on their Caucasian physical resemblances. The paternal protection gave the mulatto an advantage in comparison to the other slaves. Paula 1972, pp. 26-31; Hoetink 1958, pp. 73-78.

100 Verton 1977, p. 27.

previously described stratification between the two white groups was the result of socio-economic interests and differences of religion and language. However, both the Protestants and the Jews considered themselves socially and racially superior to the black enslaved and freed persons.¹⁰¹

§ 2.4.1.1 Enslaved people and their resistance

In his study Paula describes a slave society as ‘a society in which people are bound together in serfdom for an end imposed on them: the performance of coercive labor’. The first characteristic is related to the subordination of a group to a dominating power. The powerful group has its own imposed standard of living, conduct and identity. The second characteristic concerns cheap labour forces of slaves in the service of their masters. This can be considered as a connective factor of the community. The third characteristic is based on family ties and loyalty and it formed a strong unifying factor. According to Paula slavery is ‘... the condition of a person who is the legal property of another and is bound to absolute availability. Slavery is a legalised social institution in which humans are held as property or chattels, completely subjected to the will of another person.’¹⁰²

Among scholars, there has been various positioning and debate on the (cruel) treatment which the enslaved people received in the colony of Curaçao.¹⁰³ Yet, as stated by Allen, the main issue is not the kind of treatment which the enslaved people received, but rather the dehumanisation and disfigurement of a human being under the legally instituted system of slavery.¹⁰⁴ Slavery was, simply put, a legalised social institution in which human beings were held as property. Only the then enforced slave regulations placed some limitation on the power of the slave owner.¹⁰⁵ The slave laws supported the slavery system. Slavery as a legal institution in the Dutch territories did also find its legal foundation, according to Kunst, in the old Roman law.¹⁰⁶

The first Dutch regulation on slave laws came from the Instruction of 1636. Surinam was the first Dutch territory which had its own complete slave regulation in 1686, while the colony of Curaçao received its own regulation just after the revolution of 1795, which provided a legal foundation for the position of the slaves.¹⁰⁷ This regulation did not recognise the citizenship rights of the enslaved, as it was just a regulation to maintain and to sustain public security.¹⁰⁸

101 Paula 1972, p. 14; Römer 1998.

102 Paula 1987, pp. 20-25.

103 See e.g. Hoetink 1958, pp. 112-113; Hartog 1961, p. 45; Paula 1972, pp. 24-25; Römer 1978, p. 17; Verton 1997, p. 33.

104 Allen 2007, p. 79.

105 Goslinga 1956, pp. 18-32; Römer 1989, p. 178.

106 Very remarkable was the fact that ancient concepts concerning the institution of slavery drawn from the old Roman law system were still visible and applicable in the New World in that period of time. For a more accurate description of the institution of slavery in the Dutch colony, a study of this concept according to the old Roman legal system is recommended. See e.g. Prichard 1967; Kaser/ Wubbe 1971; Lokin 2008.

107 The regulation contained inter alia provisions on areas such as working hours (Arts. 1 and 2), payment (Art. 3), clothing (Art. 4) and punishment in cases of violations of the rules (Art. 6). Publication of 20 November 1795, no. 28, in: Schiltkamp & de Smidt (red.) 1978, pp. 514-517; see also Römer 1989, p. 180; Paula 1974, pp. 313-319.

108 Van Aller 1994, p. 128.

There were several other slave decrees prior to the enactment of this regulation, such as the prohibition of assemblage of 1741 and the punishment for desertion by slaves of 1748.¹⁰⁹

The colony sustained three main revolts amongst the enslaved against their adverse situation. The rebellion of 1716 was a resistance against the established order (elite).¹¹⁰ The second rebellion of 1750, provoked by Minase slaves,¹¹¹ was against the white slave-owners and against some individuals of their own race, the latter being seen as an extension of the white elite. The biggest revolution of 1795 on the other hand can be categorised as a protest against the established powers, the harsh working conditions and for emancipation. The underlying motives were the ideas about freedom, equality and solidarity that were proclaimed during the French Revolution of 1789, which led to the slave revolution of St. Domingue¹¹² and the American Revolution, and which spread to the colony of Curaçao. The leader of the enslaved people and the rebellion of 1795, Tula, demanded the abolition of slavery and the emancipation of slaves based on these ideas of liberty.¹¹³ As the revolt of 1795 failed to free the enslaved persons, the action led to certain legal measures to better their condition with the enactment of the regulation of 1795.¹¹⁴

In sum, the revolt of 1795 was a result of the influence of the international struggle for emancipation. Afterwards, there were few noticeable events in regard to the enslaved and their living conditions, particularly during the short periods of English and French occupation.¹¹⁵ A new era started with the re-establishment of Dutch authority in the colonies in 1816.

§ 2.4.2 *The ethnic groups during the colonial period 1816-1863*

The Curaçaoan slave society of the nineteenth century was characterised by a social stratification based on external (physical) features. The population was accordingly divided into three main groups.¹¹⁶ The position of the Protestants as white, descendants and carriers of European culture remained well established¹¹⁷ and superior to the other groups. In most cases they owned large estates and held important public functions within the colonial governmental

109 See Publication of 7 June 1741, no. 150; Publication of 18 October 1748, no. 205; Publication of 2 November 1789, no. 382, in: Schiltkamp & de Smidt (red.) 1978, pp. 218-219, 262, 454-457.

110 A group of trade slaves tried to engage in a revolt. These were temporarily stationed slaves destined for the slave markets of Latin America and the Caribbean. Coomans, Coomans-Eustatia & van 't Leven (red.) 1999, p. 475; Allen 2007, p. 65.

111 This revolt occurred on 5 July 1750. These slaves were individuals born in freedom from São Jorge de Mina (West of Africa). They were known for their spirit of resistance. Their action was directed against ill treatment and for freedom. See e.g. Goslinga 1956, p. 34; Hoetink 1958, p. 127; Hartog 1961, pp. 309, 447; Verton 1977, p. 30; Kunst 1981, p. 126.

112 This territory is nowadays known as Haiti. This revolution led to the overthrowing of the domination of white power and the proclamation of the independency of Haiti in 1804. Hartog 1961, p. 324; Verton 1977, p. 30, Paula 1987, p. 31; Van Aller 1994, p. 86.

113 Goslinga 1956, p. 39; Hartog 1973.

114 Publication of 20 November 1795, no. 28, in: Schiltkamp & De Smidt 1978, pp. 514-517; Verton 1977, p. 31.

115 The period between 1796 and 1816 is known as the confusion period. The Dutch Batavian Republic (1795-1806) was at war with the English and French. The Netherlands was occupied by the French between 1810 and 1813. The first English occupation of Curaçao was from 1800-1803. The island fell into English hands for a second time in 1807, after a short Dutch period, up until 1816. Hartog 1961, pp. 486-490, p. 543; Kunst 1981, p. 231.

116 Römer 1979, p. 35.

117 Paula 1972, p. 28.

system.¹¹⁸ Prior to their emancipation in 1824 the Jews were inferior to the white Protestants.¹¹⁹ They turned into an economically and politically powerful group, which had to be reckoned with by the high Protestants. These two ethnic groups showed themselves to be very ambitious and successful. The slaves and the freed people had to show obedience towards them. The segment of the freed slaves grew, as the slave owners tended in times of economic crises, like the early nineteenth century, to free slaves through manumission or the slaves would buy their own freedom.¹²⁰ Liberty granted particularly by manumission to the former slave was not equivalent to the freedom enjoyed by the white segment of the community. It was merely an instrument¹²¹ for the slave owner to avoid his responsibilities towards a specific group of slaves. In sum, this socio-economic construct led to the development and establishment of the 'master's and slave's pattern of behaviour' among the population; a pattern of conduct which is still visible in contemporary Curaçaoan society.¹²²

At the beginning of the nineteenth century the biggest ethnic group was formed by (freed) black and coloured people, with differentiations based on skin colour and economic position.¹²³ The (freed) coloured people originated from the frequent (forced) sexual relationships between inferior female slaves and the superior white male master and not from intimate relationships between the male-slave and his mistress. The latter type of relationship was morally and socially not accepted and, even more, it was strictly condemned by both the white and the enslaved segments of the community.

The privileged position of some members of the coloured population resulted from the paternal protection provided by their white procreator, particularly the Jews. Furthermore, most coloured offspring were granted freedom through manumission¹²⁴ by their father, i.e. master, when reaching adulthood.¹²⁵ Members of the coloured group took every possible measure to maintain the difference between themselves and the freed slaves. Their Caucasian external (physical) resemblances together with their privileged socio-economic status led to their superior social status.¹²⁶

Differentiation between the coloured people, the freed blacks, and the enslaved people was very characteristic of the society. Consequently, the classifications based on external (physical) features and daily tasks¹²⁷ were maintained and strengthened throughout the

118 Hoetink 1958, p. 47-52; Paula 1972, p. 3.

119 They obtained only in 1824 the same citizenship as the Protestants. See e.g. Hoetink 1958, pp. 39, 51; Marks 1973, p. 78; Verton 1977, pp. 28-29.

120 The slaves received a small payment for their labour. This may seem a very odd practice considering the fact that the slaves were objects, the property of the masters themselves. Hoetink 1957, p. 111; Paula 1972, p. 23.

121 This legal figure also had its foundation in the old Roman law. Age and illness were other reasons for a slave owner to dismiss a slave during the classic Roman period. Examples of manumission were: (1) '*testamento*' (by will); (2) '*vindicta*' (by a declaration of the magistrate in the presence of his owner that the slave is a free man); (3) '*censu*' (by a declaration of the censor that the slave is a Roman citizen). Prichard 1967, pp. 79-80; Kaser/Wubbe 1971, pp. 85-87; Lokin 2008, pp. 69-72.

122 See e.g. Hoetink 1958, p. 125; Verton 1977, p. 33; Schrijs 1990, p. 135.

123 Hoetink 1958, pp. 75-80; Schrijs 1990, pp. 137-138.

124 Manumission was merely a private legal action of the slave owner regarding his property, which meant the freeing of individual slaves. The slave would obtain his liberty but he would not obtain any civil or political rights. Goslinga 1956, p. 35; Römer 1979, pp. 14-15.

125 Schrijs 1990, p. 137.

126 See e.g. Paula 1972, pp. 29-32; Römer 1978 (b), p. 10; Schrijs 1990, p. 138; Allen 2007, p. 73.

127 Differentiation based on tasks is not absolute as, due to the smallness of the island, slaves had to perform several different tasks during the different seasons of the year. Differentiations based on daily tasks were primarily noticeable at the larger plantations located on the Western side of the island. Römer 1979, p. 33.

nineteenth century. The social and legal inequality between the whites and the non-whites became legitimised and internalised by all community members, where it was considered as a natural state of being. Despite all these conditions and differences, mutual socio-cultural influences between the ethnic groups were noted; thus a creolisation process took place.¹²⁸

§ 2.4.3 *The emancipation of the enslaved people: the period 1863-1915*

Despite the abolition of the international slave trade by the Netherlands in the colonies in 1814, the illegal trade continued until the mid nineteenth century.¹²⁹ Curaçao became a depot for the export of slaves to other colonies and a centre for the internal slave trade.¹³⁰ The then international humanitarian arguments against slavery could not stand against the fight for economic interests. Between the abolition of the slave trade in 1814 and the actual legal liberation of the enslaved population in 1863, several decrees were issued by the colonial administration which regulated different aspects of the position of slaves. Some provisions anticipated the future emancipation of the slaves.¹³¹ Prior to this, informal liberty¹³² was permitted to the slaves in the colony. However, up until emancipation in 1863¹³³ the enslaved person remained an individual deprived of the effectuation of rights inherent to his humanity.

Regardless of the resistance of the slave-owners and the lack of interest in the position of the enslaved, several additional measures¹³⁴ were taken anticipating the process of emancipation in the Dutch colonies. In 1853 the first steps towards the liberation of the enslaved people were undertaken. The freedom of the enslaved people did not come free of charge.¹³⁵ The main concerns were the establishment and implementation of indemnification measures for the slave-owners and not the social well-being of the majority of the population.¹³⁶

Emancipation meant effectively only changes in the legal status of the slaves, as the freed individual was no longer the property of another person and some of the existing legal barriers between the ethnic groups were removed. It did not alter the social and economic realities of the former slaves though. The socio-economic mechanisms which determined the relationship between the master and the former slaves persisted. Emancipation in itself

128 Verton 1977, p. 33; Romer 1978 (b), pp. 7-28; Römer 1998 (a), pp. 64-86.

129 Art. 8 Convention 1813, in: Kunst 1981, p. 166.

130 Paula 1972, p. 23; Verton 1977, p. 31.

131 See Art. 117 Regulation 1828. According to this provision the slave was a 'person' without the rights inherent to his humanity, and not an 'object'. He was submissive to his master, who was his 'tutor'. Römer 1979, pp. 31-32.

132 Due to a shortage in the provision for the basic needs of the slave (poverty), a kind of liberty was granted by the master whereby the slave had to provide for himself in his daily necessities.

133 Slavery was officially abolished on 1 July 1863, yet the law was of 8 August 1862 (P.B. 1862, no. 15). Curaçao commemorated in 2013 the 150th anniversary of this event. Paula 1987, p. 50.

134 The By-laws of 1824 and 1857 regulating master-slave relations (P.B. 1857, no. 2); see Paula 1972, 42; Van Aller 1994, p. 131.

135 A Commission was set up to consider proposals on the necessary measures towards the abolishment of slavery. Some of its recommendations were: (1) Financial compensation for the slave-owners and not for the slaves, (2) Repayment by the slaves to the State for their liberation and (3) Emancipation only according to religious premises. See e.g. Römer 1979, p. 30; Paula 1982, p. 49; Oostindie 1997, p. 55.

136 A State Commission was set up by the Government of the Netherlands which had the task of formulating proposals on the emancipation of slaves. Paula 1972, pp. 39-42.

did not alter the state of mind and the socio-cultural perceptions to which the members of a slave society were accustomed.¹³⁷

With the subsequent introduction of the tenant system in the colonies in the West, an informal dependency of the former slaves on their former masters was reintroduced and kept in place.¹³⁸ The post-emancipation Curaçaoan society became a servile society in which serfdom¹³⁹ existed through the '*paga-tera*' contracts, despite the fact that the former slaves were legally considered to be small farmers. The '*paga-tera*' contracts were private contracts in which the former slave would receive a piece of land near the plantation from his former master. The payment took the form of the performance of free labour by the former slave on the plantation of the former master who would provide stock, tool and seed for cultivation.¹⁴⁰ The introduction of this system was one of the mechanisms that led to the development of the '*patronage*' system that became so characteristic of this society.¹⁴¹ The situation of the former slaves in the city was in some aspects even worse than that of the ones in the countryside. They remained through other mechanisms dependent on their former master.

Curaçao was back then confronted with an immense surplus of labour and severe poverty amongst the former slaves and coloured people. Next to agricultural activities and small artisan activities, the weaving of hats and the mining industry became the most important economic activities of the population. Yet, these activities did not provide the necessary means of survival.¹⁴² In short, the emancipation of the former slaves was insufficient to effectuate noticeable changes in the established socio-economic structures within society.¹⁴³

The post-emancipation Curaçao of 1863-1915 was a society in which the patterns of the old slave society were prolonged. The economic and social mobility of the lower ethnic groups was limited due to the very few economic opportunities and to racial barriers.¹⁴⁴ This situation led to interregional migration waves among the inhabitants in search of better opportunities.¹⁴⁵ The first and biggest migration wave in the history of the colony occurred between 1917 and 1920 as a relatively large group of men migrated to Cuba looking for a better future and job opportunities in the sugarcane industry.¹⁴⁶ Various negative consequences followed, such as a shortage of labour, the disruption of family structures and an increase in poverty.¹⁴⁷

137 See e.g. Paula 1972, pp. 43-46; Römer 1979, p. 47; Van Aller 1994, p. 134.

138 See e.g. Paula 1972, p. 45; Römer 1979, p. 40; Paula 1987, p. 51.

139 This structure was very common in Medieval Europe and previous to this in the (late) Roman period. See e.g. Prichard 1967, p. 87; Kaser/Wubbe 1971, p. 89; Lokin 2008, p. 71.

140 Römer 1979, pp. 41-42; Van Aller 1994, pp. 134-135.

141 Van Aller 1994, p. 135.

142 See e.g. Verton 1977, p. 31; Römer 1979, pp. 41-44, 54-55; Oostindie 1997, p. 64.

143 A small group of workers was employed in the mining industry after the discovery of phosphate reserves in 1875. See e.g. Paula 1972, p. 47; Paula 1973, pp. 18-19; Verton 1977, p. 37; Römer 1979, pp. 62-63; Schrijs 1990, p. 98.

144 Römer 1979, pp. 44, 48.

145 Countries where they emigrated to were: Costa Rica, Colombia, Venezuela, Puerto Rico, Surinam and Cuba.

146 See e.g. Paula 1973, pp. 11-16; Allen 1992, pp. 59-76; Allen 2001.

147 See e.g. Paula 1973, p. 31; Römer 1979, p. 56; Allen 2001.

§ 2.5 Modern (industrialised) Curaçaoan society 1915-1954

The establishment of the Royal Dutch Shell Oil Refinery in 1915¹⁴⁸ caused a rupture in the existing socio-economic structures. It led to the arrival and establishment of several new ethnic groups, the introduction and development of modern means of communication, political and educational emancipation, a new social structure and economic prosperity.¹⁴⁹ The high Protestants lost their privileged position due to the competition from the new Dutch immigrants (experts) from the Netherlands. They gradually lost confidence in the colonial Government, which favoured the new-comers. The Jews on the other hand adapted to the new developments and they were successfully able to maintain their privileged position. The Afro-Curaçaoan segment was partially able to cut loose from the patronage system. The less profitable enterprises like fishing, hat weaving and agriculture were abandoned for the better paying jobs in the oil industry, the phosphate mining industry¹⁵⁰ and developing commerce areas. Consequently, a large rural-urban migration was registered.¹⁵¹

Better infrastructure, healthcare and educational facilities were developed due to the presence of the Royal Dutch Shell Oil Company between the 1920s and 1950s. The socio-economic distance between the high Protestants, the low Protestants and the (middle class) coloured segment of the population grew narrower as a result of the new prosperity, possibilities and amelioration in facilities. The socio-economic impact of the establishment of the Royal Dutch Shell Oil Company was however less favourable for the lower class. They undeniably made some progress, but it was very relative. Paula subsequently drew a parallel between the condition of the slaves at the time they were imported and the condition of the population just after the establishment of the oil refinery. The similarity lay with the fact that during both periods black people had the lowest status in society. Their lack of education influenced and justified the place which they took on the working and social scale. Although they mobilised themselves to a better social position, they remained generally in the same lower social class.¹⁵²

Subsequently, two main problems manifested themselves with the establishment of the oil refinery, namely the shortage of water and of labour. The response of the Royal Dutch Shell Oil Company on the latter challenge was the import of labour from firstly the other islands within the colony of Curaçao, then from the region¹⁵³ and afterwards from countries like Lebanon and Syria.¹⁵⁴ The migration of labour, mainly single men, led to the further segmentation of

148 The Royal Shell Oil Refinery operated until 1959 under the name the 'Curaçaoase Petroleum (Industrie) Maatschappij' (CP(I)M) (Curaçaoan Petroleum (Industries) Company).

149 Hoetink 1958, p. 157; Paula 1972, p. 47.

150 The phosphate mining industry flourished and was the main industry up until the mid 1920s. Römer 1979, pp. 56-57, 64.

151 Verton 1977, pp. 40-41.

152 Paula 1972, p. 48.

153 In a short contribution on the migration of people from the English-speaking Caribbean, Allen pleads for more research on the socio-cultural consequences of their establishment on and departure afterwards from Curaçao (and Aruba), as not much investigation has been performed on this aspect of the history of the island. Allen 2011, pp. 333-344.

154 They started apparently in 1923 with the recruitment of workers. Workers came from the Netherlands, Surinam, the British West Indies, Venezuela, Portugal and Madeira. Afterwards the Lebanese, Syrians, Chinese and Ashkenazi Jews from Eastern Europe established themselves. These last-mentioned had fled from Europe to escape the terror of the Nazis. For a contribution on Portuguese migrants and their integration in the Curaçaoan society see do Rego 2012.

society. External (physical) features, religion and language and the differential policy of the Royal Dutch Shell Oil Company in housing, facilities and education¹⁵⁵ were the main factors by which the segregation of groups within the community was preserved.

A strong sense of social solidarity among the inhabitants emerged, which was expressed through the concept of '*Yu di Kòrsou*',¹⁵⁶ through which the locals distanced themselves from the new Dutch and the other immigrants.¹⁵⁷ There was nevertheless in no sense an absolute division between the social ethnic groups as marriages and social interactions between members of separate ethnic groups were registered. This led to the further development of a multi-ethnic and multicultural¹⁵⁸ society.

Other consequences were fast urbanisation and population growth.¹⁵⁹ With the amelioration of facilities and infrastructures the Executive was forced to expand its own services and apparatus. Ultimately, the primarily closed and diversified economy was changed into an open economy, with the oil industry as its main economic activity. Prosperity was unequally divided among the social groups though. A large group consisting of black inhabitants and the lower-class migrants did not really profit from the economic growth.¹⁶⁰ Considering all the above, a low self-esteem and self-image was developed and maintained among the Afro-Curaçao segment of the population.¹⁶¹

§ 2.6 Relevant socio-economic developments after 1954

Curaçao was gradually turned into a class-based society consisting of an upper class formed by the descendants of the Jews,¹⁶² high Protestants and Catholics, Lebanese and Indians; a middle class formed by a large group of coloured people and a small group of blacks, and a lower working class consisting of a large group of blacks and poor immigrants. As a result of educational emancipation the Government introduced a scholarship policy, whereby primarily members of the middle class were able to send their children to study abroad, particularly to the Netherlands, in the pursuit of higher education. Several Afro-descendants were able to mobilise themselves socially by this means. The new professionals, however, assimilated the customs of the (white) upper class and Western culture and they discriminated against the black lower class. This became more pronounced during the 1960s.¹⁶³

Technical developments led to the introduction of severe measures in the oil company in the 1950s, which resulted in the lay-off of several thousand employees in the early 1960s. This led to the departure of a large group of migrants and to unemployment among

155 The ethnic groups were, for instance, encouraged by the oil company to settle in distinctive neighbourhoods especially created for them. Thus, spacial segregation was stimulated. In the case of Portuguese migrants see do Rego, pp. 77-83.

156 The concept '*Yu di Kòrsou*' means literally 'child of Curaçao' [translation by A.R.], which refers to the local inhabitants of the island. According to Römer the identity of the '*Yu di Kòrsou*' is actually centred in the language '*Papiamentu*'. See Römer 1974, pp. 49-60.

157 See e.g. Marks 1978 (b), pp. 121-122; Römer 1979, pp. 69-71, 94; Allen 2003 (b), pp. 78-83.

158 For an elaboration on this concept see § 9.3.

159 Marks 1978 (a), pp. 56-75.

160 See e.g. Römer 1979, p. 68; Schrijs 1990, pp. 98-100; Verton 1997, pp. 122-123.

161 Paula 2003, pp. 111-116.

162 In this sense I refer to the descendants of both the Sephardic Jews and the Ashkenazi Jews.

163 See e.g. Römer 1979, pp. 112-115; Pieters Kwiers 1991, pp. 112-116; Verton 1997, p. 123; Schrijs 2003, pp. 122-124.

particularly the members of the lower class.¹⁶⁴ The Government tried to address this with, *inter alia*, financial aid from the Netherlands and the European Community.¹⁶⁵

The economic deprivation and racial-based discrimination experienced by the weaker social group finally caused the workers revolt of 1969. The revolt was actually a protest against discrimination against lower class workers and against the unjust political reality, which commenced with a strike among workers of a contractor of the Royal Dutch Shell Oil Company. They demanded equality in payment for all workers of the oil company. It eventually led to a process of consciousness for better working conditions, social justice and against the privileged position of the establishment (elite).¹⁶⁶ The Kingdom (i.e., the Netherlands) adopted thereafter a non-involvement approach, which was reflected in its lack of interest in the development of (the population of) the island.¹⁶⁷

The socio-economic consequences of this revolt for the Afro-Curaçaoan segment of the population were enormous. It led to improvements in the social and working rights of employees by federal and local Executives and the official recognition of trade unions.¹⁶⁸ Several laws on the regulating of the legal position of workers were enforced, such as the National Ordinances on the Termination of labour agreements (Dismissal law) of 1972¹⁶⁹ and on minimum wages.¹⁷⁰ The political (power) shift that took place was also an important effect of this revolt as members of the black segment of the population obtained political influence and for the first time in Antillean, i.e. Curaçaoan, history black people were represented in the higher government organs and in the Government.¹⁷¹

Prior to this event political power was in the hands of the white elite groups, who were unable or unwilling to bring about effective changes in the socio-economic and political situation of a large group of the population. Accordingly, during the 1970s and 1980s a more socio-economically sensitive policy from the Executives was noticed and also an awareness of the local (Afro) identity. On the other hand, an opportunistic approach and political patronage among the new (black) elite in politics, trade unions and young professionals emerged.¹⁷² Both the local and the federal Executives introduced several economic activities to diversify the economy. In addition to activities such as tourism and offshore banking, financial (development) aid from the Netherlands was of great importance. Yet, this financial aid created a dependency mentality as the projects based on these programmes did not have a structural character and the funds were not administered properly for the benefit of the weaker social groupings.¹⁷³ Consequently, a sub-culture of materialism and dependency among the population began to develop.

164 Schrijs 1990, pp. 101-102.

165 Römer 1979, p. 104; Verdon 2002, pp. 4-7.

166 The revolt took place on 30 May 1969. Verdon 1977, pp. 85-93; Schrijs 1990, p. 103; Oostindie 1997, pp. 160, 229.

167 Verdon 2002, p. 38.

168 Van Dijke & Terpstra 1987, pp. 16-38.

169 P.B. 1972, no. 111.

170 P.B. 1972, no. 110.

171 The Netherlands Antilles got its first Afro-Curaçaoan Prime Minister, Mr E Petronia, in 1969. For a study on the positioning and strategies of the then main political parties of Curaçao and their influence on the electoral behaviour of the population and for the maintenance of political power in the period between 1979 and 1991 see Cijntje 1999.

172 See Verdon 2002, pp. 9-11.

173 Tourism and offshore banking became a very significant means of income for the Antillean, i.e. Curaçaoan society in the 1970s and 1980s. Schrijs 1990, p. 105; Martha 2008, pp. 73-95.

With inter alia the closure of the Royal Dutch Shell Oil Company in 1985, which led to the lay-off of many people, profound negative impacts¹⁷⁴ were registered on the economy of the former Netherlands Antilles, i.e. Curaçao. Since then, the Venezuelan national oil company (PDVSA) took over the operations of the oil refinery.¹⁷⁵ It should be noted that, besides the socio-economic effects caused by the oil refinery, structural damage to the environment and damage to the public health were also caused. In his considerations on the matter of 2003 George called this situation a severe violation of the fundamental rights of a significant part of the inhabitants to a sound and safe environment. The companies concerned have not been held accountable by the Governments of the former Netherlands Antilles or the Kingdom, nor did the Kingdom take action to remedy the situation.¹⁷⁶

Eventually, the federal Government was confronted with an enormous budgetary deficit due to its own mismanagement and corruption amongst other things.¹⁷⁷ It attempted in the late 1980s and the 1990s to address this severe situation by engaging in a privatisation process.¹⁷⁸ In the end, it requested financial aid from the Netherlands to avoid a possible bankruptcy, through the involvement of the International Monetary Fund (hereafter: IMF) from 1996. The conditions which led to the implementation of austerity measures, stipulated by the IMF, led to additional negative impacts on the economy.¹⁷⁹ The downsizing of the government apparatus, the liberalisation of the labour market and cut-backs in social services were a few of these measures. The commitment for financial support from the Netherlands for countervailing measures to cope with the negative impacts of the austerity measures were not (entirely) complied with. This aggravated the weak socio-economic situation of the island.¹⁸⁰

The island was accordingly confronted with high unemployment, particularly among the new unprepared generations and vulnerable groups, and with (more) poverty¹⁸¹ in the late 1990s.¹⁸² The disparity in income and wealth among the inhabitants grew further. This situation was conducive to the second and biggest migration wave in the history of the island and the growth of a drug-related economy, which led to the creation of a sub-culture of violence, alcoholism and gambling addictions.¹⁸³ Between the late 1980s and 2005 several thousand inhabitants, a significant part of the labour force, left the island in search of better socio-economic opportunities in the Netherlands, as a reaction to the austerity measures

174 The other negative economic impacts were (1) the devaluation of the Venezuelan currency (the Bolivar) which had a negative impact on tourism from Venezuela and (2) the revocation of a taxation agreement on offshore companies in the mid 1980s by the United States of America.

175 There is a rental agreement between the Government of the Island of Curaçao and 'Petroleos de Venezuela SA' (PDVSA) until 2019. See 'Plan van Aanpak Isla Raffinaderij', Regering van Curaçao, 30 May 2012.

176 George 2003, pp. 19-47.

177 Hasham 2003 (a), pp. 164-168; Schrijs 2003, pp. 124-126; George 2003, pp. 50-59.

178 Many government owned companies went through this privatisation process. Goede 2003, p. 99-117; Hasham 2003 (b), pp. 147-158.

179 The former Netherlands Antilles as a non-independent country could not obtain direct financing from the IMF.

180 Reaction of the Antillean Minister of General Affairs (E.N. Ijs), on the letter of the Dutch Minister of governmental reform and Kingdom's Affairs to the House of Representatives, no ref., topic: 'Hoe het wel op de Antillen wel heeft gewerkt: een reactie op de brief van 22 augustus 2005 van de Minister van Bestuurlijke vernieuwingen en Koninkrijksrelaties aan de Tweede Kamer over de aanpak van de staatkundige vernieuwingen op de Nederlandse Antillen', (no place), 6 september 2005; see also Verton 2005, pp. 366-367, 370.

181 Schrijs 1990, pp. 105-111; Schrijs 2003, pp. 124-126.

182 Hasham 2003 (a), pp. 159-177.

183 Cuales 1987, p. 20; George e.a. 2003, pp. 15-37.

and as an escape from poverty. Differences in opportunities, socio-economic life conditions and standards between the countries within the Kingdom were the main reasons for this exodus.¹⁸⁴

During the last decades the establishment of new groups of people from mainly other Caribbean and Latin American¹⁸⁵ countries, as well as from China,¹⁸⁶ in search of a better economic future has also been noted. Due to their lack of preparation and to prevailing prejudice a significant number of these (il)legal migrants¹⁸⁷ ended up in the lower socio-economic levels of society. They increasingly occupy the lower income jobs, while lacking proper protection under social and labour laws.¹⁸⁸

§ 2.7 The influence of the (Catholic) Church, i.e. religion 1634-1970s

The institution of the Catholic Church has had an unprecedented influence on the development and social well-being of the majority of the inhabitants of this island, namely the Afro-Curaçaoans.¹⁸⁹ Protestantism and Judaism were the religions practised by the (higher) white social groups. As a matter of fact, religion was a mechanism to keep the unequal power-relations in place. Slaves and their descendants were consciously not sought as Protestant converts, as a measure to maintain the unequal power divide.¹⁹⁰ Accordingly, Afro-descendants became Catholics as a result of the efforts of Catholic missionaries and clergymen.

Many authors¹⁹¹ mention and acknowledge the importance of the socialisation and the emancipation of the Afro-descendants through education and the combating of poverty by Catholic missionaries. The influence of Afro-Curaçaoan people on the Catholic Church can not be excluded either, as observed by Bishop.¹⁹² What all the authors agree on is the influence of the regulations and laws of the Catholic Church on the (family) lives and education of the Afro-Curaçaoans and on society as a whole over the course of time.

184 Oostindie 1997, pp. 163, 212-215.

185 There seems to be little academic research on the socio-economic and cultural impacts of the establishment of 'Latinos' in Curaçao. In a short contribution van der Sloot provides some insights on the formation of identity by 'Latinos' in this society. Van der Sloot 2011, pp. 345-356.

186 The Chinese transformed themselves into an economical powerful group that the other upper-class groups have to reckon with.

187 In 2007 the then federal Government agreed upon a period of amnesty (the so-called 'Brooks Tower' protocol), as the number of illegal migrants could not be determined. The objective was the registration of these inhabitants and to provide them with a residence permit. This one year permit had to comply with many strict conditions. So, in 2009 the 'Brooks Tower' agreement was implemented by the then Minister of Justice, which had the objective to give legal status to illegal migrants, who had been living in the former Netherlands Antilles for a longer period of time. As of 2013 the Government intended to introduce a second period of amnesty as the situation of illegal migrants has worsened again. See Oostindie & Klinkers 2012, p. 88; De Bruijn & Groot 2014, p. 28.

188 Characteristics of most of the new immigrants are that they came from poorer (regions of) countries like Colombia, Haiti, Jamaica, Venezuela and the Dominican Republic. De Bruijn & Groot 2014, pp. 32-56; Oostindie 1997, p. 123.

189 This ethnic group is represented nowadays in the lower and middle classes. As a matter of fact, the middle class decreased during the 1990s and early 2000s due to the imposed austerity measures resulting from the Structural Adjustment Programmes of the IMF in the early 1990s.

190 Streefkerk 2003, p. 45.

191 See e.g. Abraham-van der Mark 1973; Smeulder 1987; Bishop 1987; Römer 1998 (a); Streefkerk 2003; Juliet-Pablo 2006; Allen 2007; Allen 2010.

192 Bishop 1986; Bishop 1987.

The colonial administration was for many years not involved in the social and economic well-being of the (poor) people. In severe times of economic depression, such as the early nineteenth century, it was the three churches (religions) which financially supported their people in need.¹⁹³ Catholic missionaries were responsible for the conversion and education of the Afro-descendant. Their teachings were based on the Dutch Catholic doctrine. Prior to this process, the West India Company did not concern itself with the spiritual well-being of the enslaved people in any manner. Spanish priests attempted to bring some education in the Catholic doctrine to them, yet these priests had little influence on the island. Rupert points out that besides these activities, these priests were also active in the illicit trade between the island and the mainland.¹⁹⁴ The colonial administration tolerated their activities as long as they maintained the religious differentiation among the ethnic groups within society, which supported the superior position of the white Protestants.¹⁹⁵

The arrival of the missionary Niewindt in 1824 in Curaçao led to the process of civilisation of the enslaved people. His efforts resulted eventually in the total conversion of the Afro-descendants into Catholics together with the work of other missionaries that followed him in the second half of the nineteenth century.¹⁹⁶ The Catholic Church influenced to a great extent the socialisation process of the (former) enslaved people, by imposing standards (rulings) for the institution of marriage, the education of children, family life and many other areas of social life. So far as the relationship between men and women was concerned, the Church upheld a cult of domesticity, respectability and pureness for women who ought to be subordinated to men in a patriarchal system.¹⁹⁷ In the case of the Protestant Church, although its direction lay in the hands of the men, women played a prominent role as the main carriers and protectors of the faith, morality and the higher European values.¹⁹⁸

Prior to the emancipation of slaves, several unsuccessful attempts were made by the missionaries to achieve the recognition of marriages of the enslaved people¹⁹⁹ against the colonial rulings.²⁰⁰ After emancipation their work in these fields was facilitated. The Church also tried to eliminate those cultural practices which it considered to be heathen, as it found them to be remnants of an inferior African inheritance, such as the ‘*tambu*’ gatherings and African religious expressions. In his research Rosalia addresses the systematic oppression of the ‘*tambu*’ by both the Church and the State.²⁰¹ Thus, the Catholic Church attempted to accomplish civilisation through the suppression and elimination of this and many other customs.

The Church itself introduced many discriminatory rulings for women and children born out of wedlock. Illegitimate children did not receive the same treatment as legitimate children and were severely discriminated against. For example, they were not allowed to be baptised on Sundays or take their Holy Communion with legitimate children or attend the same schools as

193 Kenepa 1980, p. 50.

194 Rupert 2006, pp. 41-43; Rupert 2007, p. 158.

195 Streefkerk 2003, pp. 35-38.

196 Römer 1979, pp. 26-28; Römer 1998 (a), pp. 24-25.

197 Streefkerk 2003, pp. 38-40; Allen 2007, p. 217.

198 There were initially two main Protestant churches, the Reformed Church and the Lutheran Church. They united in 1828 into one church which became the United Protestant Congregation (*De Verenigde Protestantse Gemeente*). Kenepa 1980, pp. 65-66.

199 The slaves used to formalise their cohabitation by engaging in marriage by a priest in a clandestine way.

200 Allen 2007, pp. 93-95.

201 Rosalia 1997.

these children. They could only be baptised on weekdays, before sunrise and after sunset. This marked the beginning of the stigmatisation by the Church and by the community of children born out of wedlock. Unmarried pregnant women in their turn were not allowed to receive care in care institutions. Unmarried or divorced couples were not permitted to receive communion. The Catholic Church, like the Government and the Royal Dutch Shell Oil Company later on, portrayed holy matrimony and monogamous morality as the ultimate foundation for a family and thus of the nuclear family structure within a patriarchal system. The Catholic Church was also responsible for a strict system of coercion and sanctions.²⁰²

Its discriminatory rulings were maintained well into the 1960s. The Church attempted to change, through its restrictive regulations and paternalistic approach, cultural phenomena such as 'matrifocality'²⁰³ in the family scene and '*machismo*' among the Afro-Curaçaoan men. In these attempts it prevented these patterns of conduct from determining the way of life of the majority of the population.²⁰⁴ It even had political power through the establishment of '*de Volksbond*' and eventually its own political party.²⁰⁵

In its attempts to convert the Afro-descendants into respectable citizens, it paid attention to the education of youngsters, even in the early stages of its teaching. Girls were taught to lead a moral, decent and pure life. As many were sexually exploited by their employers and other men, their virginity had to be protected. Girls who abided by the rulings of the Church were rewarded with the possibility of teaching as non-qualified schoolteachers at nurseries and primary schools. Boys were educated to become responsible men, future husbands and fathers. They were taught different types of trades and craftsmanship. However, it became clear, even at an early age, that women were more receptive to the teachings of the Catholic Church than men.

This institution was ultimately responsible for the establishment of Catholic primary and secondary schools which were attended by the Afro-segment of the population. The children of the white Protestants and the Jews attended public schools. This religiously-oriented education was grounded in a paternalistic and class approach, which impeded the real social emancipation of the Afro-Curaçaoan inhabitants in the long run. In this sense, this segment became alienated from its own origins. Only a few of the inhabitants were able to achieve socially upward mobilisation through this system.²⁰⁶

The initial religious teachings and education of the lower class by the pastors took place in the Creole language '*Papiamentu*'²⁰⁷ though. The Dutch clergymen who came later for the further education of the population imposed the Dutch language and doctrine, as

202 The Catholic Church even used physical abuse on those who were disobedient. Abraham-van der Mark 1973, pp. 17-25; Allen 2007, pp. 149-161.

203 Local sources use the term 'matrifocality', while the term 'women's centrality' is also utilised to identify the central role of women in the family scene. These terms are used interchangeably in this investigation. For the definition of 'matrifocality', see de Palm (red.) 1985, p. 314.

204 Bishop 1986, pp. 6-18.

205 '*De Volksbond*' (1919) was an organisation directed at providing social services to its members and the community. It led to the establishment of the first unions and the Catholic political party in Curaçao. This was '*De Katholieke Curaçaoose Partij*' (the Curaçaoan Catholic Party). Streefkerk 2003, pp. 40-41.

206 The presence of the Catholic Church was even recorded in local politics, with the establishment of the Catholic party in 1937 as one of the first political parties of Curaçao. Römer 1998 (a), pp. 42-48; Allen 2007, pp. 94, 164-170.

207 The common view is that the origin of this creole language lies in the Proto-Afro-Portuguese pidgin-creole, with Spanish and Dutch influences. '*Papiamentu*' developed as a '*lingua franca*' through which the inhabitants of the island had communicated with each other since the eighteenth century. For a study on the origin of this language, see Martinus 2004.

'Papiamentu' had the stigma of being inferior; a situation which has affected the school development of many children negatively up until the late twentieth century.²⁰⁸ However the church was ultimately not able to prevent the infiltration of some influence of African heritage of the Afro-descendants in its own teachings.²⁰⁹

I have to note further that the interregional migration induced by the Royal Dutch Shell Oil Company led to a further fragmentation among religions, more specifically under the Protestants, as the (non-white) newcomers from the West Indies practised (a different kind of) Protestantism.²¹⁰ The society was confronted with another challenge, as it became clear to the locals that Protestantism was not the religion of only white people. The (Sephardic) Jews in their turn underwent a secularisation process as they assimilated some characteristics of the local culture. The ethnic distinction based on religion faded in part as the adjectives 'Protestant' and 'Jewish', as a characteristic of the white groups, partly vanished in the 1960s.²¹¹

The strong presence and influence of the Catholic Church on the daily lives of the local Afro segment of the population remained, however, unchallenged and quite prominent up until the beginning of the 1970s. Its influence diminished after the events of 1969 and the introduction of more progressive governmental policies afterwards and the emergence of materialism, further liberalism and individualism among the population.

§ 2.8 Relations and family structures during the colonial period 1634-1863

The family structures which were constructed in the Caribbean during the seventeenth and eighteenth centuries were primarily derived from the West European family concept, but with an additional racial dimension. Upper class white men occupied a superior position in family matters related to their race and (financial) means. They had unlimited access to (freed) black and coloured women, with whom they procreated. Yet, the virginity, pureness and the chastity of the white women had to be protected and preserved. Their official nuclear family was kept in accordance with religiously-based Western standards within a patriarchal system. The wives lived isolated and protected lives and, together with the children, they were subjugated to the will of their husbands. Child bearing was the only duty they had to comply with to preserve the family name. Moreover, among the Jews marriage was seen as the establishment of alliances between families and a mechanism for the continuation of their privileged socio-economic status. Subsequently, endogamous marriages were strongly encouraged.²¹² Prominent coloured men together with their coloured wives on their turn assimilated and adopted the Western (nuclear) family structure. As the race divide barred interracial marriages, black and lower class coloured women could not comply with these standards.²¹³

208 In her socio-historical study on the local language 'Papiamentu' in the educational system of Curaçao, Smeulders put a comprehensive picture of the struggle for the recognition and the position of this language until 1987. Smeulders 1987.

209 See e.g. Bishop 1987, pp. 20-25; Römer 1998 (a), pp. 76-83; Streefkerk 2003, pp. 42-44.

210 The immigrants from the region were, amongst others, Methodists and Anglicans.

211 Römer 1998 (b), pp. 160-163.

212 Endogamous marriages were unions among Jewish family members for the promotion of social cohesion, strong power-relations and group identity. See Abraham-van der Mark 1993, pp. 38-46.

213 Kenepa 1980, pp. 34-39, 61-62.

Inappropriate behaviour concerning sexuality and procreation among the slaves were encouraged by the masters, from an economic perspective. In no sense did Western standards apply to (former) slaves. Moreover, they were unable to engage in legal marriage and form their own families. There are indications that enslaved people were willing and able to form a nuclear family, yet the threat of separation by their masters prevented this.²¹⁴ The black (enslaved) men had a weak social position and they were stripped of their masculinity. Some sources²¹⁵ suggest that the reason lay in the family structures known in West Africa, and the fact that the male lost his dominant role within his family and society due to his enslavement. The female slave became the stable factor in this context. All types of family structures were present among the freed black and lower class coloured people. Women in this group had to undertake many tasks to provide and care for their families.²¹⁶ So, black and coloured females got their central role from this, which led to the creation of the female-centred family structures in Curaçao.

§ 2.8.1 *Relations and family structures after 1863*

The relationships in post-emancipation Curaçaoan society were (1) marriage, (2) de facto unions and (3) visiting unions. Within these relationships one encounters various types of family structures, such as the nuclear family, the extended family and the female-headed family.

After emancipation in 1863, marriage became the ultimate and most desirable form of cohabitation. An increase in civil marriages was subsequently registered, as the institution of marriage was placed within the reach of freed people. In the early twentieth century the Royal Dutch Shell Oil Company consciously directed its policies and measures towards the creation of the Western (modern) family structure. It portrayed legal marriage and monogamous morality as the foundation for the nuclear family. Measures such as free healthcare for legitimate children and the spouse of a married employee, the granting of housing facilities to a married employee and pension support (facilities) for the widow and the legitimate offspring of a deceased employee, were introduced. Afro-Curaçaoans who mobilised themselves to better social positions, adapted and adjusted to the new standards related to respectability, monogamous morality and familial responsibility that were often stimulated by these material motives. As well as these material motives, importance was attached to marital status by the notion of the creation of a better life for Afro-Curaçaoan people through marriage. This change in behaviour led to a decline in child birth and a growth in marriage at one point.²¹⁷ The contribution of the church in this matter also determined the social acceptance of this institution by the majority of the inhabitants.

Marks came to the conclusion that the strengthening of the institution of marriage led to a weakening of certain tendencies known among (lower class) black people. In these permanent relationships men were seen and acted as head of the household. The male

214 Allen 2007, p. 86; Kenepa 1980, p. 40.

215 See e.g. Abraham-van der Mark 1973; Marks 1973; Kenepa 1980; Römer 1993; Marcha & Verweel 2005; Marcha e.a. 2011.

216 Kenepa 1980, pp. 35-36.

217 Abraham-van der Mark 1973, pp. 17-18; Marks 1978 (a), pp. 64-68; Marks 1978 (b), pp. 123-127.

provided financially for his family, as the female was generally not supposed to have a paid job. This was to some extent also applicable to women living in de facto unions.

De facto unions were relatively unstable relationships, which had a lower socio-economic ranking in comparison with marriage. They symbolised the weaker (socio-economic) position of the male-companions. Women had a stronger position in these households as they forcefully performed the role of (co) breadwinner.²¹⁸ Henriquez disputes this assertion as she considered that de facto unions symbolised a sign of the creation of a stable cohabitation on the part of men. It just put the lack of responsibility of men towards their relationships into perspective.²¹⁹

Lastly, the most unstable relationships were the visiting unions. In these relationships men were (sexually) involved with more than one woman simultaneously or they were married and having extramarital affairs. The other women in these relationships were often single women in charge of their own households. The income of these single mothers was the lowest as they were forced to provide for their offspring by themselves. In cases in which the men were not able to provide (financially and socially) for their children, they were replaced by the woman as the head of the family.²²⁰ The men showed a migratory behaviour in this sense. Consequently, the tendencies towards women's centrality were strengthened.

As the first reason for the migratory behaviour portrayed by Curaçaoan men, some sociologists²²¹ suggest the modelling of the dissolute behaviour of upper class men during the colonial period by the men of the lower class. A double standard in morality and power-relations in society manifested itself as men were allowed to have multiple sexual partners.²²² Other sociologists²²³ suggest that the reason lay in the breaking down of the family structures known in West Africa. The female obtained her central role as the only stable factor in a slavery system, where the male was stripped of his manhood and powerless to act against the violence and ill-treatment that he received.

As pointed out by Römer, based on the position of Smith on the matter, these family structures prevailed even 150 years after the abolition of slavery as a consequence of the fact that the socio-economic position of former slaves and their offspring did not improve. They still occupy the economically lower positions. The third possible explanation for this kind of behaviour is thus connected with the weak socio-economic position of the Afro-descendants within society. The survival ability of this group, in correlation with their cultural traditions, led to the creation of the extended and female-headed family structures that were found in the entire Caribbean region.

218 Marks 1978 (b), pp. 127-137.

219 Henriquez 2006, pp. 47-48.

220 Marks 1978 (b), pp. 138-140.

221 See e.g. Hoetink 1957; Abraham-van der Mark 1973, pp. 25-27; Marks 1973, pp. 46-58; *Vrouwen van de Nederlandse Antillen: naar een betere toekomst*, de Universiteit van de Nederlandse Antillen/ Ministerie Binnenlandse Zaken en Koninkrijksrelatie (deel 1)), Curaçao, March 2010.

222 Cuales 1998, p. 91; Marcha & Verweel 2011.

223 See e.g. Abraham-van der Mark 1973; Marks 1973; Römer 1993, pp. 12-16; Marcha & Verweel 2005; Marcha e.a. 2011.

§ 2.9 The (socio-economic) position of women and gender-relations in historical perspective

The lack of (extensive) socio-historical sources on women and gender-relations in the colony of Curaçao makes any assessment on the position of women quite difficult. Oppression had a different face for each woman according to the social and ethnic group to which she belonged. Many (secondary) historical studies elaborate on the public sphere, and seeing that the role of women revolved primarily in the private sphere, it is almost impossible to give an accurate description of the development in their socio-economic and legal position. Furthermore, no detailed studies have been found on gender aspects in the period 1634-1816.²²⁴ Despite this severe shortcoming, I can make some observations based on the sources which I did encounter.

§ 2.9.1 *The period between 1634-1816*

The then valid mechanisms of diversification among the ethnic groups also applied for women. Considering the lack of improved population statistics and socio-historical literature about the gender aspect until the late eighteenth century and my background as a lawyer, any attempt on my part to create a picture of the situation would be a futile endeavour. I am therefore convinced that in-depth historical research on the position of women should be performed by historians, sociologists and anthropologists. Information could be retrieved from the social interaction between the ethnic groups, as well as from the records of the colonial administration and church archives.

Rupert remarked, for instance, that although the contribution of local women during the seventeenth and eighteenth centuries has not been fully analysed yet, they did participate in maritime-related activities connected with the trade between Curaçao and the mainland. White females already outnumbered their male counterparts in the early eighteenth century due to the latter's activities at sea and migration. A small group participated as minor entrepreneurs in the slave trade and in (illicit) commercial exchanges. There were even widows who continued the economic activities of their deceased upper class husbands in a successful way.²²⁵ Moreover, Jewish women 'were expected to preserve the purity of blood lines and the values of the patriarchal society'.²²⁶

In regard to the enslaved people, Allen remarked that the ratio of male to female among them during the seventeenth century was unclear. Presumably male slaves outnumbered female slaves because of the preference for strong and healthy young men as workers.²²⁷ The activities of (freed) male slaves in the (illicit) maritime economy as seafarers are definitely recorded.²²⁸

As labour was an important factor in the daily life of the enslaved people and their masters, female slaves performed the same work as male slaves as well as their other, female-only, tasks as market vendors and domestics. Despite this, the slave regulation of 1795

224 Römer-Kenepa 1992, p. 21.

225 Rupert noted, based on a suggestion of Jordaan that these women used to buy sick slaves and resell them later on for a profit. Rupert 2007, pp. 155, 159-162; see also Abraham-van der Mark 1993, p. 40.

226 Abraham-van der Mark 1993, p. 41.

227 Allen 2007, pp. 65-66.

228 Rupert 2006, p. 42.

specified gender-based differences in payment.²²⁹ The overall exploitation of black women's sexuality for reproduction or economic gain by the masters was very characteristic back then.²³⁰

For the sake of completeness, I have to point out in regard to the gender aspect among the native inhabitants that Van der Dijs remarked, based on Nooyen, that the small group that remained on the island lived in isolated areas. This group was, with the exception of the work that it performed for the colonial administration, totally ignored by the Dutch, 'unless for sexual pleasure', which implied some kind of (forced) sexual interaction between female Indians and Dutch men. The Indians lived presumably in a matrilineal system, yet by the end of the eighteenth century they were no longer registered²³¹ as a distinctive ethnic group.²³²

§ 2.9.2 *The period between 1816-1863*

Improved historical information about the late eighteenth and nineteenth century Curaçaoan slave society gave me more insight into the position of women and gender-relations. For instance, in the early nineteenth century a surplus of women was already registered due to the departure of a significant part of the (male) population because of the economic depression.²³³

Women's position stemmed from the social ethnic group they belonged to, the economic position of their family, religion, legal and marital status.²³⁴ White women did not have much participation in the public sphere. Alteration in their social status was possible through marriage or intimate relationships. The choice of marriage partner was strongly influenced by the ethnic background and the socio-economic status of the husband-to-be. They maintained a privileged lifestyle as their tasks and activities as home-makers were given to domestic servants. Yet, they were kept in a legal and economic backward position by and dependent upon their spouse and male family members. The exceptions were widows who forcefully took over the business of their late husbands. In general, the lack of education and social contacts between the women (and girls) of the two upper-class white groups conduced to an isolated existence.²³⁵

The social interaction between the white groups and members of the black groups was more visible, despite the then social-ethnic mechanisms. The position of freed black and coloured females was connected to economic means and external (physical) features. For instance, although prominent married coloured women had in an economic sense the same status as white women of the lower Protestant class, they were considered to be inferior to them based on their skin colour. Yet they imitated the lifestyle of upper-class white females. Less fortunate coloured women occupied the same position as poor workers. They participated actively in economic activities for additional support for their families,

229 Article 3 Regulation 1795.

230 Cuales 1984, pp. 114-115; Henriquez 2006, pp. 50-52.

231 According to van der Dijs, only baptism books registered children born of Indian parents as 'Indians'.

232 Van der Dijs 2011, pp. 29-32.

233 For an overview see Kenepa 1980, p. 46.

234 Römer-Kenepa 1992, pp. 13-15, 21.

235 See e.g. Hoetink 1958, pp. 45-49; Kenepa 1980, pp. 20-22, 28-30, 64; Römer-Kenepa 1992, p. 41; Abraham-van der Mark 1993, pp. 38-42.

as market vendors, field workers, washerwomen, craftswomen and hat weavers. Alteration upwards in their status was accomplished through marriages or relationships with well-to-do men. This was also the case for freed black women. Yet, these women remained at a low position on the social ladder based on their race and weak economic status.²³⁶

Female slaves in their turn occupied a strong position in the upbringing of their children as the only stable factor. Their participation in slave work was determined by the economic status of the homes they belonged to and/or the size of the plantation. Diversification based on skin colour and type of work was common. In the countryside male slaves outnumbered female slaves; they were field workers, craftsmen and fishermen. The dark skinned female slaves who did field work were in that sense considered as being non-feminine.²³⁷ Apart from this, they performed the same work as the lower freed coloured or black women. The light skinned female slaves were employed in the master's home in the city, as nannies or domestic servants.²³⁸ The role of the nanny, the so-called 'Yaya', in the upbringing of the offspring of her masters, determined the socialisation between the two ethnic groups.²³⁹ In short, female slaves were hard working individuals.

Both white as well as black (non-white) women were victims of oppression by the white male though. The oppression of women varied based on their social, economic and ethnic status.²⁴⁰ White married women experienced oppression in an economic, legal and social sense, while enslaved black, i.e. coloured, women were victims of physical abuse, sexual and economic exploitation. Single white and freed women enjoyed, in some areas of private law, the same rights as men, but when they entered into marriage these rights were restricted. They became legally subordinated to their husbands.²⁴¹ Moreover, in times of economic crises the overall position of women worsened, particularly among upper class white women, prominent coloured women and female slaves. The first-mentioned group coped with the challenges by engaging in economic activities as small shop-owners.²⁴²

§ 2.9.3 *The period between 1863-1914*

The described patterns did not alter after emancipation. Despite their performance, freed Afro-Curaçaoan women would not receive the same payment as men. Moreover, these women were forced to combine their external labour activities with the care of their children, spouses and homes. As a consequence of their low incomes, they participated in informal activities to provide for additional income for their families. Women in the countryside were responsible for the economic activities outside the village.²⁴³

236 Kenepa 1980, pp. 22-24, 30-33.

237 Cuales 1984, pp. 114-115; Henriquez 2006, p. 51.

238 Allen 2007, pp. 67, 73.

239 See e.g. Hoetink 1958, p. 12; Kenepa 1980, pp. 33-34; Römer-Kenepa 1992, pp. 25, 31; Witteveen 2006, pp. 32-33.

240 Römer-Kenepa 1992, pp. 24-29, 41.

241 This was particularly the case in family and private matters. Kenepa gives a list of the legal limitations with which these women were confronted, such as their legal incapacity after marriage and their weak position in the then divorce law. Within the scope of this research, many of the issues in the current legal system are discussed in Chapter 10. For more historical information on some of these matters, see § 2.9.4-§ 2.9.5; Kenepa 1980, pp. 59-61.

242 Ibid., pp. 54-55.

243 The women were in charge of childcare, cleaning and cooking. Allen 2007, pp. 201-203.

Several studies mentioned women as washerwomen, ironers, nannies, cooks, midwives, market vendors, and weavers of hats.²⁴⁴ The last activity became an important source of income at the beginning of the twentieth century. The production was primarily in the hands of women. Women were also active as owners of little shops. According to Allen about 50 percent of the little shops in the countryside were owned by women. Furthermore, many young lower class women, after receiving their instruction from the church, worked as teacher assistants to the nuns in schools.²⁴⁵

The migration²⁴⁶ to particularly Cuba forced women to provide for their families under extreme circumstances. Without the financial support of their male partners and with raging poverty, they participated even more than usual in the labour market. They played numerous social roles in the public sphere as well.²⁴⁷ Migration by Afro-Curaçaoan women was also noted, as they often accompanied wealthy families as ‘*Yayas*’ or cooks.²⁴⁸ Women played an important role in their households and the education of children. Apart from this, they were expected to be good carers for the many demands of their spouses, regardless of the type of relationship they were in and the physical abuse they often suffered.²⁴⁹

In sum, the participation of lower class women in the (in)formal working sector was inextricably linked with their responsibilities in the private sphere. As to the kind of relationship they were engaged in, the previously given elaboration suffices. The upper class white women in their turn lived their isolated lives according to Western family standards. The majority remained in the confinement of their homes as home-makers and carers.²⁵⁰

§ 2.9.4 *The period between 1915-1954*

As socio-economic structures altered with the establishment of the Royal Dutch Shell Oil Company, economic growth affected, inter alia, family relations and the position of women. At first, mainly (single) men, without their spouses, established themselves on the island. As a result of the adoption of more Western-style family structures, many (middle class) women were able to perform the roles of housewives and carers, while men provided (financially) for the home through their employment at the oil company.²⁵¹ Many (lower class) women lost their place in the labour sector as the economic activities they were employed in, such as agriculture, craftsmanship and as market vendors became obsolete. With the decline in international hat exports, they became primarily employed as (live-in) domestic servants and washerwomen for Dutch employees of the oil company and the local middle class. Henriquez qualifies this process as the reallocation of job opportunities for women. Women, particularly those of the lower class, changed the working areas they were engaged in.²⁵² Abraham-van der Mark puts forward a contrary view. According to her

244 For more details on the significance of this industry, see Römer 1979, pp. 54-55.

245 Römer 1979; Allen 2007; Allen 1992, pp. 64-76.

246 For an overview (statistics) of the population and the migration by gender, see Allen 2007, pp. 293-294.

247 This was related to the difficulties connected with the possibilities and the willingness of the men to send financial aid to their families at home. Paula 1973, pp. 40-43; Allen 2001, pp. 12-19.

248 The migration of women to Cuba was registered prior to that of the men. See Allen 2001, pp. 12-19.

249 Allen 2007, pp. 217-223.

250 Marks 1973, p. 55; Smeulders 1987, p. 11; Abraham-van der Mark 1984, p. 4.

251 ‘*Vrouwen van de Nederlandse Antillen: naar een betere toekomst*’, de Universiteit van de Nederlandse Antillen/ Ministerie Binnenlandse Zaken en Koninkrijksrelatie (deel 1)), Curaçao, March 2010, p. 48.

252 Henriquez 1991, pp. 25-27.

these socio-economic changes only made women more dependent upon their spouses. They increased the discrepancies in wages between men and women and the marginalisation of the latter, as the job opportunities for women in the oil company were limited and gender-oriented.²⁵³

As the Catholic Church was against the employment of (lower class) women as domestic servants due to sexual exploitation by their employers, they were encouraged to work as shop personnel. Consequently, with a higher demand in the late 1920s and a shortage by the 1930s of domestic servants, the recruitment of female domestic servants from Surinam and later from the British West Indies instigated by the Royal Dutch Shell Oil Company was observed. Their admittance was bounded by many restrictive conditions²⁵⁴ though. These women lacked (legal) protection against exploitation and ill-treatment by their employers. They were legally incapacitated and also discriminated against by the local population.²⁵⁵

As local women became legally incapacitated after entering into marriage,²⁵⁶ their place was the confinement of their home, as carers of their spouses and their children in accordance with Western standards. Men had full authority over their wives and marital property. Only with the explicit authorisation of their husbands could women dispose of their own or marital property.²⁵⁷

The process of political and constitutional liberation which the island went through in the 1940s made many women aware of their political rights.²⁵⁸ They participated consciously in the struggle for their voting rights. The contribution of particularly the '*Luchadonan pa Derecho di Voto pa hende muhe*' and '*Damanan di Djarason*'²⁵⁹ in the process of political awareness was significant as they sent petitions for the introduction of universal suffrage to the House of Parliament and the Executive of the Netherlands; that fundamental right was ultimately granted in 1948.²⁶⁰

§ 2.9.5 *The period after 1954*

The severe economic downturn as a result of the austerity measures introduced by the Royal Dutch Shell Oil Company in the 1950s, affected women (in)directly. With the establishment of free-zone industries, such as Texas Instruments in the 1960s, primarily unskilled (lower class) women were, although temporarily, able to cope with this situation, as they obtained employment. Actually, it was with the arrival of this company that women officially entered the formal labour market en masse as cheap labour forces. The harsh conditions under which these women had to work led to demands by the trade unions for improvements

253 Abraham-van der Mark 1984, pp. 4-6.

254 The record level of this practice was registered between the 1940s and the 1960s. These women were for instance only allowed to work as live-in house maids and they were not allowed to have children.

255 See e.g. Abraham-van der Mark 1984, p. 6; Philipps 1992, pp. 97-106; Allen 2011, p. 338.

256 This was regulated in Art. 1347 Civil Code (old); see also Art. 1032 Civil Book (old).

257 Only a few upper class women who were married under certain conditions or outside the community of property agreements retained authority over their own assets. De Lannoy-Berg 2000, p. 99; Martis 2003, p. 238.

258 For an assessment of this development, see Pieter Kwiers 1991.

259 The former organisation (the Fighters for the voting rights of women) was formed by women affiliated to the Curaçao Catholic Party and the latter (Ladies of Wednesday) were women affiliated to the People's National Party [translation by A.R.]. Both groups were founded in 1948. Henriquez (red.) 2002, pp. 135-139, 186-189.

260 See e.g. Pieters Kwiers 1991, pp. 68-76; Henriquez (red.) 2002; Martis 2003, p. 233.

in working conditions and higher wages. Ultimately, these demands led to mass lay-offs and the eventual closure of the company in 1976. The unintended (social) effects of the employment of women became the growth in their awareness and economic independence. The idea that women could only have main roles in the family scene and that they ought to be (financially) supported by their spouse crumbled.²⁶¹

Actually, the financial contribution of women was not only complementary to that of their spouse; in many cases they became the (main) breadwinners. The overall position of women in the labour sector deteriorated in the late 1960s and the 1970s.²⁶² In the public sector single women were only allowed to work on a temporary basis.²⁶³ Already married women could not have permanent occupations. Only in exceptional cases, when they acted as the main breadwinner or they were indispensable for the Government, were they permitted to be employed on a temporary basis.²⁶⁴ Other measures excluding the participation of women in the public labour sector after entering into marriage or living in de facto unions made things worse. The same exceptions concerning employment in specific cases were valid for this group of women.²⁶⁵ In the case where they were single (mothers), they would receive unequal payment based on their sex and marital status, regardless that they were breadwinners and performing the same work as men. The reasoning behind these provisions lay in the gender-based approach to the provider's role and the protection of the employment (socio-economic) opportunities of men.²⁶⁶

With regard to education, girls and young women saw further education and training as a means to achieve their goals. Many women pursued teaching, nursing or office careers in the 1950s. In general women of the lower classes were brought up to become workers and to be (financially) self-reliant and strong, while women of the middle class were expected to pursue further education and marry well-educated men and establish partnerships in accordance with the Western (modern) family structure. In some cases their participation in the labour sector was permitted by their husbands as a solution to cope with (high) Western living standards. This aspect, together with many other socio-economic aspects, led to the creation of a (poor) self-identity of women, a phenomenon which was extensively examined by Henriquez.²⁶⁷

261 The other two companies were Schlumberger and Rockwell, which were only on the island for a couple years. Texas Instruments enjoyed excessive (tax) benefits for its establishment from the local Government, which were often in breach of labour legislation. Abraham-van der Mark 1984, pp. 6-8; Ramdas 1994.

262 For an assessment on the disparity and the adverse position of women in the labour sector up until 1980, see e.g. Wempe 1981, pp. 24-28; Cuales 1984, p. 116; Van Dijke & Terpstra 1987, pp. 16-22.

263 See Art. 5 para. 3 subsection e L.M.A 1964.

264 Articles 6 paras. 3 and 4 L.M.A 1964.

265 The female servant after entering into marriage received an honourable discharge under Art. 95 as did those who lived in de facto unions, under Art. 96. Article 95 L.M.A. 1964:

'Vrouwelijke ambtenaar, die in het huwelijk treedt, wordt eervol ontslag.'

'Een gehuwde vrouwelijke kracht mag bij uitzondering in tijdelijke dienst worden gehandhaafd:

Wanneer er voor zolang geen geschikte mannelijke of ongehuwde vrouwelijke kracht gevonden kan worden;

Wanneer en voor zolang zij in belangrijke mate moet bijdragen in de noodzakelijke kosten van levensonderhoud van het gezin.'

Article 96 L.M.A. 1964:

'Vrouwelijke ambtenaar, die in concubinaat is gaan leven, wordt eervol ontslagen.'

266 These provisions stemmed from a decision of 1948. For more background details on the motives for their enactment, see Lopez 1982, pp. 97-105; see also Luiten 1981, p. 23.

267 Henriquez 1991.

Nonetheless, some of these well-educated, middle class women became aware of their disadvantaged position in society, after the pursuit of further education abroad and locally in the 1960s, and especially after the revolt of 30 May 1969. This revolt had indirect effects on the awareness of women in society; a process that was induced by the improvements in the political, socio-economic position of the black (male) segment of the population. Several women's organisations addressing the realisation of women's equal rights, the elimination of sex-based disadvantages and the isolation of women in the private sphere, became active. Ultimately, these developments led, inter alia, to the participation of lower and middle class women in many non-conventional professions, such as law enforcement,²⁶⁸ and to the struggle for the elimination of the legal incapacity of married women in the 1970s. In this period many lower class women got employment in the rather unstable hospitality business, which did not provide much security or protection.²⁶⁹

It was only by the late 1960s and early 1970s that the Government started to occupy itself with the well-being of the inhabitants of Curaçao, including lower class women.²⁷⁰ The general law on financial support was for instance introduced in 1971.²⁷¹ It installed a Committee to compile a list of the discriminatory laws against women.²⁷² The abolition of the legal incapacity of married women was one of its recommendations, which was effectuated in 1975.²⁷³ Moreover, single women were painfully aware of the fact that they had to occupy positions as civil servants based on temporary contracts for over ten years before they could obtain a permanent appointment. If they obtained permanent occupation before the term of ten years had ended, they would lose their accrued pension benefits.

The awareness among women grew further in the 1980s. This resulted in the struggle against and the eventual elimination of several discriminatory laws²⁷⁴ and in court cases for equal treatment, often with the support of the trade unions and women's organisations.²⁷⁵ Extremely important in this process was the recognition by the Supreme Court of Justice in the *Boon v van Loon* case²⁷⁶ of 1981 that the pension benefits accumulated during marriage formed part of the marital property. In the case of divorce, pension benefits had to be divided among the spouses. With this case the (informal) contribution of women during the marriage was recognised. Local women have greatly profited since then from this decision.²⁷⁷

268 The possibility for the employment of women in the police force was created in 1971. This was the first governmental organisation which recruited women. The customs and postal services followed afterwards. De Lannoy-Berg 2000, pp. 100-103.

269 Abraham-van der Mark 1984, p. 8; Kibbelaar 2005, pp. 45-46.

270 See A.B. 1966, no. 69. This Insular Act on social welfare or at least part of it came into force in 1971 (A.B. 1971, no. 11); see also van Dijke & Terpstra 1987, pp. 16-38.

271 The Guideline granting social welfare to Curaçao of 1971 (P.B. 1971, no. 11) is an elaboration on Art. 8 Insular Act social welfare; see also Henriquez 1991, pp. 29-33.

272 Do Rego-Kuster 1990, p. 544.

273 P.B. 1975, no. 70.

274 For an assessment of the amendments of discriminatory legal measures up until 1990, see do Rego-Kuster 1990, pp. 542-547.

275 Two court cases had definitely influenced this process. The first one considered the dismissal of a female civil servant after entering into marriage and the second case dealt with the dismissal of 8 female workers at the national psychiatric clinic 'Dr. D.R. Capriles Kliniek'. For more information on the court cases, see § 7.7.1.1.

276 HR 27 November 1981, NJ 1982, no. 503 (*Boon v van Loon*).

277 For a more recent Antillean case confirming the point of departure of the Supreme Court dictated in the *Boon v van Loon* case, see GHvJ of 26 August 2008, LJN:BF0059; strangely enough, this ruling has still not been incorporated in an Act by the legislature. The General Pension fund of Curaçao (APC) still pays the

The discrimination related to the dismissal of married female civil servants or female civil servants living in de facto unions ended in 1983. Women, regardless of their marital status, have since then been able to become civil servants in permanent service. At the same time married female civil servants were granted the right to a pension.²⁷⁸ In 1985 the possibility was created for single women to register their children.²⁷⁹ Further improvements came in the late 1980s after several court cases and the installation of a commission which advised the Government on the eradication of additional discriminatory provisions in the National Ordinance on legal and material rights and obligations of civil servants (L.M.A.) 1964 thereby departing from the breadwinner concept.²⁸⁰ The inequality in payment based on sex and marital status resulted in many conflicts and social injustice. The disputes between the trade unions²⁸¹ and the Government on the persisting unequal treatment in wages based on sex and marital status were eventually settled in 1990²⁸² and confirmed by the Supreme Court of Justice in 1993.²⁸³ In 1995 the amendment in the system of levying tax²⁸⁴ over the earned income of a married woman was enforced. This entailed an important measure for the obtaining of some kind of economic independence by women. The possibility for civil servants to opt for part-time work was introduced, as supposedly a measure of flexible employment for women in 1997. Furthermore, the eradication of the discrimination of maternity leave rulings in the public and private sectors became a reality in 1999.²⁸⁵

Sex- and gender-based discrimination in the private sector, particularly in lower occupations such as domestic servants, persisted. Grassroots women lagged behind as many often did not obtain the required training and opportunities to upgrade themselves and demand equal treatment. Women were again confronted with high unemployment amongst them as a consequence of the IMF's Structural Adjustment Programme (hereafter: SAP). As they formed the most vulnerable social grouping in the labour market, they enjoyed the least

allowances based on the decision of the Supreme Court of Justice of 1981. Information obtained from Mr H Lau-A-Kien of the General Pension fund of Curaçao (APC), on 13 December 2013.

278 P.B. 1983, no. 22.

279 See Art. 1 section I of the National Ordinance of 6 September 1985 on the adaptation of provisions of the Civil Code (P.B. 1985, no. 117). This provision upheld the amendment of Art. 328 Civil Code (old). For details on the old situation see § 10.9.

280 This Commission was officially installed in 1988, and it gave advice on the eradication of Arts. 29, 30 and 31 L.M.A. Article 29 discriminated against illegitimate and legitimate children and single mothers as only male civil servants as breadwinners were entitled to additional allowances for their children. Articles 30 and 31 considered the discrimination among civil servants based on their marital status. In case law this unjustified distinction based on sex and marital status was dismissed by the Court. See e.g. GEA of Netherlands Antilles (Curaçao) of 9 May 1988, in: TAR-Justicia 1988, no. 3, pp. 127-130.

281 For instance, the teachers union SITEK organised several major strikes in February 1990 for equal payment for its (female) members, which paralysed the entire community.

282 After the strikes a proposition was made by the island territory Curaçao and the then Minister of Finance (Mr G de Paula) on federal level for the introduction of equality in phases. The proposal was incorporated in the then governmental agreement of Cabinet Liberia-Peters. Yet, as a result of several court cases in the late 1980s and early 1990s, the federal Government was forced to realise full equality among men and women in the public sector. See Evaluation report Decade of Women (1975-1985) of 8-10 March 1985; HR 7 May 1993, NJ 1995, no. 259, conclusie A.G., para. 3; Information confirmed by Mrs M Liberia-Peters on 3 December 2013.

283 For an examination of a selection of cases, see § 7.7.1.1

284 This system upheld that tax was being levied on the joint income of a married couple. Since the amendment in 1994 of the National ordinances on Income and wages tax (P.B. 1956, no. 9 and P.B. 1975, no. 254) tax is levied separately from the income of a married woman. See P.B. 1994, no. 142.

285 P.B. 1999, no. 69; the maternity leave Act was last modified in 2012 (P.B. 2012, no. 24).

protection and were unequally treated, particularly those of the lower social strata.²⁸⁶ Many lacked the right qualifications as they did not finish a proper (middle or higher) education, a situation which led to greater poverty in the late 1980s and in the 1990s.

Apart from the departure of (young) mothers with their families to the Netherlands during the 1990s and the early 2000s, many lower class women, together with (young) men of particularly the lower social strata, engaged in the illegal drug economy and in criminal activities.²⁸⁷ This was considered to be an answer to their socio-economic problems. Many (young) black men ended up incarcerated or dead. Another negative side-effect of the sub-culture of violence was that more women (and also children) became victims of gender-based violence.²⁸⁸ Accordingly, the introduction of measures to protect them (and children) against (physical) aggression became totally necessary. The enactment of the decree on the penalisation of stalking by 2004²⁸⁹ was a first step in the right direction. This national decree protects women against (sexual) harassment by their spouses and other men. Furthermore, the new Criminal Code of Curaçao of 2011²⁹⁰ upholds general provisions²⁹¹ on the punishment of perpetrators of violence²⁹² against an underage family member.²⁹³ Another step was the introduction in 2006 of specific (policy) instructions and proceedings by the Procurator General (PG) of the former Netherlands Antilles for law enforcement officers in domestic violence cases. These instructions modelled the policy of the Dutch Board of Procurators General on the issue of domestic (gender-based) violence.²⁹⁴

§ 2.10 Conclusion

In this description of the historical background of Curaçaoan society, the most relevant societal processes which the population went through were identified. These processes and factors influenced the (future) development of the population in general and women in particular. I can summarise these issues as follow.

Curaçao is a racially oriented society where distinction based on social status and ethnicity determine the treatment people receive. The island has formed a part of Western

286 Henriquez 1991, pp. 22-24.

287 Sassen 2009-2010.

288 For an assessment of this phenomenon in the early 1990s, see Martis 1991.

289 A new provision (Art. 313(a)) regulating this illegal activity was then incorporated in the (old) Criminal Code of the former Netherlands Antilles. See P.B. 2004, no. 13. It is now laid down in Art. 2:257 Criminal Code of Curaçao.

290 P.B. 2011, no. 48.

291 Art. 2:208-2:210 Criminal Code of Curaçao.

292 For the figures of domestic, i.e. gender-related violence, over recent years in Curaçao, see the Annual reports of 'Stichting Slachtofferhulp Curaçao' of 2010, 2011 and 2012; for figures on domestic and sexual violence between 2007-2009, see 'The First Millennium Development Goal report Curaçao and Sint Maarten 2011', The Governments of Curaçao and Sint Maarten in cooperation with the United Nations Development Program, January 2011, pp. 75, 81.

293 CEDAW/C/NLD/CO/5/Add.1, para. 4.

294 This policy was subsequently adapted in 2010. See Reader 'Aanwijzing geweld in de relationele sfeer' (pilot project Curaçao). Opsporing, vervolging en hulpverlening, Willemstad, Curaçao, 13 juni 2005. This reader included the 'Aanwijzing geweld in de relationele sfeer' of 26 Augustus 2005; 'Aanwijzing relationeel geweld 2010' (Richtlijn D 7, versie #2, augustus 2010), Curaçao, 23 August 2010. This information was made accessible by public prosecutor, Mrs M Dennaoui-Simon, on 21 November 2014, after the finalisation of the revision of the manuscript; see also Press release 'Kua parlamentario ta para pa e derechinan di hende muhé i ta hasi pregunta na Minister di hustisia tokante e seri di asesinato kontra hende muhe?', J. Henriquez, (no date).

European history since its discovery by the Spanish in 1499 and its occupation afterwards by the Dutch in 1634. It was an illicit slave trade centre controlled by the West India Trade Company until the end of the eighteenth century. Afterwards, it was governed by Dutch governmental institutions, which were locally represented by the Governor, under colonial ruling.

The three main ethnic groups were the Dutch Protestants who held the governmental powers, the Sephardic Jews who became the main traders and the legally, socially and economically powerless enslaved persons from West Africa. A strong socio-ethnic system of colonial rules and patterns of conduct governed the lives of and interaction between people in these groups. A little interaction took place through female slaves. The classifications amongst the enslaved people and the diversification amongst the ethnic groups transformed the society into an extremely racially oriented, segmented and patriarchal society. The institution of slavery, which disfigured and dehumanised human beings, brought undesirable results for the majority of the population. So, the resistance against the inhumane treatment endured by the enslaved throughout the history of the island is understandable. The well-known revolt of 1795 for liberation led by Tula is an event which is commemorated today.

It was difficult for me to retrieve in-depth information on the position of women in the early ages of the colony, as little socio-historical literature considered their position and gender-relations exclusively. The society was male-oriented, as regards both the dominant position of the white male and the strong preference for male slaves as a labour force. Historical information on women in the nineteenth century showed that their position was determined by the social ethnic group to which they belonged. The women of the white upper-class occupied a privileged, yet often isolated and meaningless, position connected with their main duty as child-bearers and with the social status of their husbands and male relatives. Slave women were a cheap labour force and sexual objects for their masters, which resulted in the procreation of mixed race children. Together with the male slaves, they were commodities who had to procreate as many assets as possible. The exploitation of women's sexuality for reproduction or economic gain was very characteristic of slave societies. The male slaves were stripped of their masculinity and they had a weak position in the family structure, while the female slaves acted as the only stable factor. Both were exposed to extreme forms of violence.

The institution of slavery was abolished in the Dutch colonies in 1863. During this process the interests of the slave owners prevailed above the wellbeing of the enslaved persons. Effectively, the majority of the population remained after this event in an impoverished situation. The enactment of the General Regulation of 1865 instituted some rights of citizenship and two public institutions for the process of self-governance, yet no change came about in the execution of public powers and the societal position of the ethnic groups. The first nod towards democratisation came about with the enactment of the State-regulation of the colony of Curaçao of 1936 which introduced limited suffrage. Universal suffrage was finally introduced in 1948.

The post-emancipation Curaçaoan society confronted severe poverty and a lack of development stimulated the economic participation of lower class women and interregional migration waves among men, which transformed the society into a female-oriented society permanently. The overburdening of Curaçaoan women and the sex-based inequality in payment are old (social) phenomena, which underline the conflicting position of women.

Already by then, many women were the main carers and (financial) providers for their families.

The differentiation amongst the ethnic groups was also religiously-based. Although many people celebrate the contribution of the Catholic missionaries who were responsible for the socialisation of the blacks through education and the combating of poverty, the discriminatory, oppressive and restrictive practices applied by the church contributed to discriminatory patterns of conduct and the denial of and feelings of inferiority about the African heritage among the majority of the population. The objective of the church was the transformation of the black people into respectable citizens from a Western paternalistic and class perspective. It imposed standards for the institution of marriage, the education of children, family life and many other societal areas upon the population. Together with the discriminatory policies of the Royal Dutch Shell Oil Company after its establishment in 1915, the (Catholic) Church impeded the real upward mobility of the people of colour. This was conducive to the growth in gender-related differential and unequal treatment, and to the dependency and marginalisation of women. The influence of the church diminished after the Government accepted its responsibility for the social well-being of the inhabitants only in the 1970s.

Despite the modernisation brought about by the Royal Dutch Shell Oil Company, which led to the influx of new ethnic groups, political and educational emancipation and economic prosperity, the old patronage system remained. The society transformed further into a multi-ethnic society based on class distinctions and internalised discrimination patterns. Disparity in economical opportunities and resources among the social groups, particularly among (lower class) women, persisted. Any upward mobility meant the adoption of Western standards and family structures, where the married (middle class) women had the main roles of homemakers and carers, and the men became the main (financial) providers. Other forms of cohabitation, such as *de facto* and the visiting unions, in which the female had a strong position, remained present. Many lower and middle class males developed a migratory behaviour pattern based on the double standard of morality copied from upper class men. The eventual participation of women in the formal labour market strengthened their consciousness; they even became politically active. The political awareness that grew as a result of the industrialisation and feelings of self-reliance gained in the World War II period strengthened claims of self-determination of the colony. It became the self-governing country of the Netherlands Antilles in the new Kingdom by 1954. Its Constitution of 1955 ensured several fundamental rights and freedoms for the inhabitants.

The lay-offs related to technical developments in the oil industry in the 1950s and 1960s, inequality in the labour and social sectors and the patriarchal political structures, fuelled the revolt in 1969. Its effects were improvements in the social, political and economic status of the Afro-Curaçaoan segment of the population, but also (extreme) materialism and consumerism emerged. The awareness among women grew further with their participation in the labour and the educational sectors. This led to the necessity for the eradication of (some of) their legal disadvantages, such as the legal incapacity of married women, which was abolished in 1975. Discrimination against the female in the public labour market based on sex and marital status persisted until 1983 though.

The departure of the Royal Dutch Shell Oil Company in 1985 led to major economic and social constraints, as well as structural damage to the environment and damage to

public health. The attempts of the Governments to diversify the economy did not have the expected results. Women were the hardest hit by these developments as they enjoyed less protection in the labour market. After fierce struggles and with the support of the unions, in 1993 the federal Government accepted the principle of equal payment for civil servants, but the inequality in wages in the private labour sector is still in place. Effectively, the financial impacts of the equality in payment in the public labour market were felt by the Government. According to many this was the main reason for the severe financial problems confronted by the former Netherlands Antilles afterwards, and not so much the financial mismanagement, lack of integrity and corruption in the public sector. At the end of the 1990s the SAPs imposed by the IMF and the Netherlands on the Antillean Government had devastating consequences for society. Confronted with a high unemployment rate, declining educational and social infrastructures, Curaçao recorded its second biggest migration wave in the late 1990s and early 2000s to the Netherlands.

The demographic effects of this exodus were minimised by the influx of new migrants from the region. Due to their lack of preparation, and to prejudice and stigmatisation, many ended up in the lower socio-economic levels of society. All these events brought a further weakening of the overall socio-economic position of a significant part of the population and further poverty, which resulted in the development of a drug-related economy and the reinforcement of a sub-culture of (institutionalised) violence. In governmental matters, after the 'status aparte' of Aruba in 1986, no significant alterations were registered for Curaçao as part of the Netherlands Antilles. The Netherlands Antilles of five members lasted up until 2010, the year in which it ceased to exist and Curaçao obtained its conditional self-governing status within the Kingdom. The dissolution of the former Netherlands Antilles resulted in more interference by the Kingdom (i.e. the Netherlands) in the internal affairs of Curaçao with the enactment of several (consensus) Kingdom's Acts. Curaçao has since 2010 its own Constitution which contains an up-to-date list of the fundamental rights and freedoms of the inhabitants.

Chapter 3

FROM FUNDAMENTAL RIGHTS TO WOMEN'S (HUMAN) RIGHTS

§ 3.1 Introduction

Human rights are the most fundamental rights and freedoms of individuals. They are inalienable to every human being, which means that the State should not prevent human beings from realising these rights. Moreover, they are essential in the creation of conditions which enable the further development of individuals.

Curaçao as a new autonomous country within the Kingdom is bound to the implementation of conventions upholding these essential rights as adopted by the Kingdom. Its Government is responsible for the realisation of these rights, yet the Kingdom as the State-party is ultimately responsible for their fulfilment and protection in the Kingdom according to Article 43 paragraph 2 Charter.¹ Hence, the acknowledged approaches on international human rights law apply to the whole realm. These approaches are firstly, the historical, philosophical and/or secular approach to civil and political rights, social and economic rights and collective and people's rights; secondly, the approach to the territorial validity of human rights, where regional and international human rights conventions are acknowledged; thirdly, the approach related to the distinction between general and specific human rights conventions where the International Convention on Civil and Political Rights is considered an example of the former category and the Women's Convention an example of the latter category.

For the main topics discussed here I have divided the chapter into two parts. The first part includes paragraphs containing descriptions of the conceptualisation of human rights in general. The second part addresses the development of women's rights. Subsequently, § 3.2 contains an elaboration on the historical, philosophical and/or secular developments of international human rights law in general. A selection of the most important time periods and scholars and their theories and visions on the conceptualisation of human rights law is included. This paragraph is followed in § 3.3 by the enumeration of the international human rights documents including the Women's Convention as a specific human rights convention. § 3.4 contains a short analysis of the relevance of the distinction between the categories of human rights for their effectuation in the domestic legal system. § 3.5 sets out observations on the claims of cultural relativism and universality. The historical and theoretical background of feminism and the women's movement are contemplated in § 3.6. This movement was of pivotal importance for the adoption of a gender-based convention.

¹ For more details see Chapter 6.

Remarks on the dichotomy between private and public are made in § 3.7. The essence of the most relevant mainstreams of feminism is explored in § 3.8. The relationship between feminism and cultural relativism in regard to women's rights is considered in § 3.9. The developments leading to the introduction of a gender-based human rights convention and the strengthening of the advancement of women are examined in § 3.10. The last paragraph, § 3.11, contains a short description of the adoption of the Women's Convention by the Kingdom and its validity in this realm. Lastly, the chapter concludes with my summary on the various findings.

§ 3.2 The philosophical and historical grounds of human rights

It is not at all my intention to give an extensive elaboration on all philosophical and historical developments that have influenced the contemporaneous concept of human rights. However, for a proper understanding of some aspects of fundamental rights, a brief recollection seems appropriate.

First of all, the conceptualisation of human rights and individualism was not formulated in the twentieth century. Human rights and freedoms are characterised by their dynamic development throughout history. Their development is shaped by the valid legal and social structure and culture of a community in a certain period of time. The interpretation and implementation of human rights and freedoms varied during the different time periods, communities and political structures. Generations build on the achievement of each other by liberating themselves from ancient authoritarian structures and by creating better life-conditions for themselves.

Ishay acknowledges six core controversies which have influenced the debates and approaches on human rights. They are the controversies on the origin of human rights, the claim of human rights as an enlightenment legacy, the contribution of socialism to human rights, the distinction between cultural rights and universalism, the tension between national security and human rights and finally the implications of globalisation on human rights.² Belden Fields in his turn gives various holistic approaches for the conceptualisation of human rights.³ In his analysis on human rights Donnelly argues that human rights do not have a strong foundation at all, and if they have any foundation, it is probably multiple and inconsistent.⁴

In his short appraisal on the matter, Bielefeldt considers two readings of the history of human rights, firstly the quasi-biological that departs from the assumption that the development of human right finds its roots in Western culture and tradition, and secondly the political readings, which suggests that human rights are merely a 'specifically modern result of unfinished societal learning processes (...) by numerous political crises and conflicts' against injustice.⁵ Many of these controversies about and approaches to human rights are in one way or the other visible throughout this (part of the) investigation.

2 Ishay 2008, pp. 2-14.

3 Belden Fields 2003, pp. 73-99.

4 Donnelly 2003, pp. 7-21.

5 Bielefeldt 2009, pp. 9-16.

§ 3.2.1 *Religious and philosophical origins of human rights*

Many writers⁶ acknowledge the fact that the history of the philosophical tradition of human rights, based on the premise that fundamental rights and freedoms are a merely Western creation dating from the European Enlightenment, has been challenged. Some even look nowadays at the world's greatest religions and cultures that could have had some influence on the Western European tradition of human rights. According to literature most major religions have elements of universalism, altruism, fraternity, tolerance, freedom and responsibility which apply to the whole of humanity. The principles of human dignity, the concepts of responsibility towards all humankind and duties, which were essential for the development of human rights, find their foundation in the great religions and cultures.⁷

Ishay points out that the origin of human rights is not exclusively secular. According to her, human rights find their origin in religious texts as well. She even remarks that in the drafting of the Universal Declaration of Human Rights, the Commission on Human Rights presided over by Eleanor Roosevelt considered all the major religions and cultures to find a common good.⁸ In her contribution Lassen disputes this. She points out that international human rights law has an exclusively secular starting point. Religion, initially considering human rights as a threat, gained its positive influence on the development of human rights later on. Bielefeldt also disregards Ishay's approach as he noted that the development of human rights was not a natural process grounded on ideas rooted in European culture, religion and tradition.⁹ Nonetheless, the relationship between religion and human rights is nowadays largely accepted by the international community despite the existing differences among the religions. The fact is that religion did not have any meaningful significance in the initial process of the conceptualisation of human rights.¹⁰

In a philosophical sense many consider the origin of human rights to lie in the teachings of great Greek philosophers like Socrates (469-399 BC), Plato (427-347 BC)¹¹ and Aristotle (384-322 BC)¹². The modern Western concepts of human rights and fundamental freedoms find some partial support in the ancient Greek and Roman political philosophies and Middle Ages Christianity, which departed from the natural law tradition.¹³ Up until the nineteenth century numerous theories on the fundamental rights of individuals in relation to the nation-state were developed and formulated by different scholars, such as the theory on natural law, the theory on the social contract,¹⁴ communitarianism,¹⁵ rationalism,¹⁶

6 See e.g. Hunt 1996; Lassen 2001; Lauren 2003; Belden Fields 2003; Haas 2008; Ishay 2008.

7 See e.g. Lauren 2003, pp. 4-10; Belden Fields 2003, pp. 44-47; Donnelly 2003, pp. 71-88; Haas 2008, pp. 10-15.

8 Ishay 2008, pp. 16-61.

9 Bielefeldt 2009, p. 12.

10 Lassen 2001, pp. 177-194.

11 Hayden 2001, pp. 13-23.

12 Ibid., pp. 24-33.

13 Van Wissen 1989, pp. 4-5.

14 The revitalising of the social contract theory took place in the twentieth century. Rawls (1921-2002) was the main scholar responsible for this process.

15 According to this theory human beings have both rights and responsibility and we as human beings have the responsibility to assure that everyone in the community is well taken care of.

16 Rationalism upholds the theory in which is believed that humans act rationally, which means that they behave according to their self-interest and the interests of society. Kant is considered as the main scholar in this regard.

utilitarianism,¹⁷ the liberal democratic theory,¹⁸ the stages-of-growth theory¹⁹ and Marxism. The more contemporaneous theories²⁰ developed in the twentieth century were the social democratic theory²¹ and legal positivism.

I briefly look in the subsequent subparagraphs at some of the approaches to and theories on the conceptualisation of human rights for the comprehension of the meaning of these rights, their justification and practical implications and their relationship with other rights and values within a society.

§ 3.2.2 *Modern time-period and Enlightenment*

The modern conceptualisation of human rights is embedded in processes, such as the development of modern science, the rise of mercantilism and the middle class, the discoveries of new territories and colonialism which occurred in Western Europe and Northern America. With the advancement of the Renaissance, the Reformation and consequently Humanism, the decline of the universalistic approach of the Roman-Catholicism of the Middle Ages manifested itself. With these events, the emphasis shifted from human beings subordinated to societal ideas in accordance with the will of God to the development of the individual, its political, intellectual and religious emancipation.²² This resulted in the formulation of various views and theories on the rights of human beings and the structure of sovereign states by several great scholars in the sixteenth and seventeenth centuries.²³ The confrontations between the powerful social groups due to the various (socio-economic) advancements in Western Europe fuelled the English,²⁴ American and French revolutions.

The liberal emancipation ideal that came about with the scientific revolution of the seventeenth and eighteenth centuries finally formed the basis for the contemporaneous human and civil rights concepts. Hobbes (1588-1679)²⁵ and Locke (1632-1704)²⁶ were

17 It upholds ideas on what is socially desirable, what enhances the greatest good for the greatest number of people. Bentham was the thinker who initially formulated these ideas, but they were revised by John Stuart Mill. Nowadays utilitarians are called the economic liberals or neo-liberals.

18 This theory regards democracy as a form of government limited by the division of powers and the checks and balances among these independent powers.

19 As formulated by Hegel history is a challenge for the social order, but its understanding results ultimately in progress.

20 Some of the contemporary scholars are: Rorty, Cranston, Nussbaum and Donnelly.

21 The social democratic theory entails the creation of a welfare state for the benefit of the weaker classes in society.

22 Burkens 1989, p. 2; Maris & Jacobs 1997, pp. 79-82; Van Wissen 1989, pp. 4-6; Lauren 2003, pp. 10-14; Van der Pot/Elzinga, de Lange & Hoogers 2014, pp. 3-10.

23 The collapse of the religious and political unity of the Roman Catholic Church and the decline of the doctrine on natural law was initiated by the Reformation. M Luther and J Calvin formulated in their writings views regarding the new relationship between the state and the church and the role of the law system in society. Other great scholars were N Machiavelli (1469-1527) and J Bodin (1530-1596). Bodin defined, in his turn the sovereignty of the nation-state as the highest, not lawfully bound, power over citizens within a territory. Van Eikema Hommes 1981, pp. 58-68; Maris & Jacobs 1997, pp. 99-103; Ishay 2008, pp. 64-79; Van der Pot/Elzinga, de Lange & Hoogers 2014, pp. 11-19.

24 The English revolution lasted more than 40 years (1642-1688).

25 T Hobbes was an English philosopher who gave in his book entitled 'the Leviathan' an extensive elaboration on the nation-state and the rule of law. Hobbes, in: Hayden 2001, pp. 57-70; Van der Pot/Elzinga, de Lange & Hoogers 2014, pp. 19-23.

26 J Locke gave in his book 'Second Treatise on Government' a hypothetical description of the natural state, which was established by voluntary individuals in a social contract. He pointed out that an individual could

the two scholars who, although they had distinctive theories on the social contract and fundamental rights, legitimated the power of the State and the rule of law. The division of power suggested by Locke was finally formulated by Montesquieu (1689-1755)²⁷ during the Enlightenment period. A social contract theorist who defined his own communitarian view on these matters was Rousseau (1712-1778).²⁸ Thus, there were several great social contract theorists who put forward their ideas on the State and individual rights, so there is not an ultimate historical authority on the conceptualisation of human rights. The correlation between these thinkers is acknowledged, as their writings are very illustrative and helpful for the interpretation of human rights.²⁹

On the other hand, there was a scholar, the opposite of Rousseau, who put much emphasis on the autonomy of the personal will, dignity and freedom of each human being. Kant's (1724-1804) liberal approach on human rights started from the view that the presence of the Government was legitimate for the guarantee of the natural rights to freedom of the individual. This formed the foundation for the acquiring of his other rights.³⁰ Many other scholars, such as Burke (1729-1797), objected to the ideas of universal human rights altogether.

Despite the progressive developments on individual rights, the powers of States and the rule of law, the ideas and rights remained confined in social ranks, classes, gender, race and nations, whereby the legitimisation of the ideas on universal human rights were kept underdeveloped. The same great minds who presented theories and principles on natural rights, democratic liberty, equality and the dignity of individuals and who challenged the privileges of the elite groups, were the ones who defended the sole application of these principles and rights based on gender and race.³¹

Hence, the first human and/or civil rights embedded in a constitution, derived from the ideas of Locke and Montesquieu, took place after the Declaration of Independence of the United States of America in 1776 by Jefferson (1743-1794) in the Virginia Bill of Rights and the Constitution³² of the United States.³³ The political and economic transformation of Western societies also led to the French Revolution thereafter.³⁴ The ideas of Rousseau and Montesquieu incorporated in '*La Déclaration de Droits de L'Homme et du Citoyen*' with the

only lose his freedom and equality through justified aggression and never through an agreement. Hayden 2001, pp. 71-79; Van der Pot/Elzinga, de Lange & Hoogers 2014, pp. 25-29.

27 Charles-Louis de Secondat, known as Montesquieu, formulated in his book '*De l'esprit des Loix*' the theory on the division of public powers among three institutes (powers), namely the (1) legislative, (2) executive and (3) judicial. Each institute operates independently and has its own authority defined in the constitution. Irrespective of the form of government, the legislative power remains the highest authority mandated by the people. Van der Pot/Elzinga, de Lange & Hoogers 2014, pp. 29-33.

28 Hayden 2001, pp. 80-87.

29 J J Rousseau wrote extensively in his book '*Du contract social*' about the importance of the sense of community. The liberal individualism portrayed by Locke and Hobbes was not important for the development of the 'General Will' on behalf of the people against the state. Belden Fields 2003, pp. 17-21; see also Van Eikema-Hommes 1981, pp. 132-139; Ishay 2008, pp. 102-103; Van der Pot/Elzinga, de Lange & Hoogers 2014, pp. 33-37.

30 Hayden 2001, pp. 109-117; Van der Pot/Elzinga, de Lange & Hoogers 2014, p. 37.

31 See e.g. Burkens 1989, pp. 10-12; Lauren 2003, pp. 18-35; Haas 2008, pp. 23-24.

32 The first declaration upholding catalogues of civil and/or human rights in Northern America was the Virginia Bill of Rights of 12 June 1776. The fundamental rights were not included in the American constitution initially. They were added to the constitution in 1791 through Amendments. Burkens 1989, pp. 8-9; Ishay 2008, pp. 93-96.

33 Van der Pot/Elzinga, de Lange & Hoogers 2014, pp. 75-86.

34 Hunt 1996 (ed.).

core values '*liberté, égalité and fraternité*' as proclaimed in 1789, ended up in the French constitution of 1791.³⁵

§ 3.2.3 *Nineteenth century's philosophical and historical events*

Further industrialisation, a free market and trade in Western societies in the nineteenth century led to a liberal emancipation movement that put much emphasis on the concept of liberty. The Industrial Revolution which brought social hardship, widening the gap between rich and poor, ultimately resulted in popular rebellions and the revival of the human rights discourse.³⁶ Ishay corrects in her historical analysis therefore the historical misinterpretation that universal suffrage, social justice and workers' rights were merely achievements of the liberal movement. She suggests that they are an accomplishment of social origins. The socialist human rights discourse was given a new incentive with these economic developments as, for the socialists, the struggles for political and economic rights were intertwined.³⁷

Simultaneously, the second colonial expansion and exploitation by Western European powers took place, which entailed practices based on inequality and exploitation grounded in race, gender and class. One of the most influential thinkers on liberalism in this period was John Stuart Mill (1806-1873),³⁸ who propagated laissez-faire economics and deregulation of the economy by the Government also in the colonies.³⁹ Several other scholars⁴⁰ expressed fundamental criticism of existing class exploitation and liberal principles though. The proclamation of freedoms and equality rights for every individual in official documents like the constitutions of Western states made the exclusion of certain social groups, like workers, women and slaves (blacks) from their most basic rights, more visible and tangible.

For social scholars Marx (1818-1883)⁴¹ and Engels (1820-1895) the ideals of human rights were nothing more than the pretence of a universal liberal and religious morality for the preservation of the benefits of an elite group. The other social groups were intentionally kept non-emancipated, consequently not fully in capacity of their fundamental rights.⁴² Marx's theory started therefore from the elimination of economic differences in a community through revolution and the realisation of true freedom and humanity through labour and education and the sense of community. He rejected the liberal concept of universal or human rights, as these rights were seen as '(...) an impediment to the achievement of a good and fulfilling life for most human beings'. He replaced this with his theory of historical materialism. For Marx, only through revolution and the disappearance of class-based distinctions could real equality be created based on the needs of people; they would then be

35 For illustrations of the theory on the division of public powers as formulated by Montesquieu, see Arts. 6, 12-15 of '*La Déclaration*'. Despite the '*volonté générale*' of Rousseau, he considered this to be the highest liberty. The '*volonté générale*' could only be reached as an expression of human equality and liberty. Scheltens 1983, pp. 9-20; Hunt 1996 (ed.); Freeman 2002, pp. 18-26; Hunt 2008, pp. 220-223.

36 Haas 2008, pp. 53-55.

37 Ibid., pp. 55-58; Ishay 2008, pp. 118-140.

38 He was the son of the utilitarian James Mill (1773-1836). Hayden 2001, pp. 136-147.

39 Lauren 2003, pp. 46-55.

40 Scholars like GFW Hegel, PJ Proudhon (1809-1865), K Marx, F Engels and F Nietzsche (1844-1900).

41 Hayden 2001, pp. 126-135.

42 See e.g. Van Eikema-Hommes 1981, pp. 140-153; Freeman 2002, pp. 29-31; Ishay 2008, pp. 130-155.

free and able to live their life in a more rewarding way. He is often considered as the last great thinker on the conceptualisation of human rights.⁴³

As a matter of fact, the emergence of nationalism in Western Europe resulting in World War I, the abandonment of international solidarity and the promotion of the political and economic⁴⁴ rights of the working-class by the socialist parties led to the collapse of the Second International in 1914.⁴⁵ In sum, the Industrial Revolution and socialism had an enormous influence on the development of the human rights discourse.

§ 3.2.4 *Twentieth century's historical developments*

The twentieth century was characterised by many upheavals and developments which led to the international acceptance and codification of human rights and freedoms. With the remarkable and powerful human rights movement at the beginning of this century, great struggles for the right to self-determination, extreme nationalism and the collapse of empires and colonialism among other things were seen. There were two attempts⁴⁶ to institutionalise human rights that arose at about the time of World War I, but thereafter they proved incapable of providing for an efficient international human rights mechanism based on either a liberal or a socialist ground during the interwar period.

The League of Nations,⁴⁷ established in 1919 as the promoter of international cooperation, peace and security, failed to fulfil its tasks.⁴⁸ Fascist powers emerged and the world was engulfed in World War II. In a response to the aggression perpetrated in Western Europe, the then president of the United States, Franklin D Roosevelt, in his address to the American Congress in 1941, put into perspective the connection between domestic liberties and international peace. On this occasion he stated the Four Freedoms⁴⁹ of all human beings, which was the first step on the road towards the universal claim of fundamental rights. He wrote strikingly that 'freedom means the supremacy of human beings everywhere. Our support goes to those who struggle to gain those rights or to keep them.'⁵⁰

With the Atlantic Charter of 1941 issued by Winston Churchill (1874-1965) and FD Roosevelt (1882-1945) guaranteeing several freedoms and principles, such as the right of people to determine their own form of government, labour standards, social security and the establishment of a new association of nations were recognised. The concept of human

43 See e.g. Maris & Jacobs 1997, pp. 215-227, 237-272; Belden Fields 2003, pp. 30-33; Van der Pot/Elzinga, de Lange & Hoogers 2014, pp. 46-49.

44 The First Workingmen's International Association (1864-1876) was the first international federative human rights organisation before the League of Nations (1919), the International Labour Organisation (1919) and the United Nations (1945). After the dissolution of the First International, the Second International (1889-1914) was established.

45 Lauren 2003; Ishay 2008, pp. 147-155.

46 The first attempt was founded on the premise of international socialism brought about by the Bolshevik Revolution of 1917 in Russia (USSR) and the second attempt was based on the progressive liberal notions of human rights by the League of Nations and the International Labour Organisation of 1919.

47 The Covenant of the League of Nations 1919 prescribed the right to self-determination, freedom of conscience and religion, the prohibition of abuses such as the slave trade, fair and humane conditions of labour for men, women and children, supervision of treaties and the improvement of health etc. Haas 2008, pp. 64-66.

48 Lauren 2003, pp. 111-133; Ishay 2008, pp. 174-178, 206-211.

49 These rights were the 'freedom of speech and expression', the 'freedom to worship', the 'freedom from want' and the 'freedom from fear' of every individual.

50 Ishay (ed.) 2007, pp. 479-481.

rights as the natural rights of individuals from a liberal perspective became a reality. The Declaration of the United Nations proclaimed in 1942⁵¹ resulted afterwards in the establishment of the United Nations in 1945.⁵²

Human rights and freedoms were widely accepted and incorporated in the Charter of the United Nations,⁵³ after much pressure exercised by particularly the medium and smaller States and by NGOs.⁵⁴ This was even more the case with the establishment of the Commission on Human Rights by the Economic and Social Council in 1946, whose main task was the promotion of human rights.⁵⁵ With the recognition of political, civil, social and economic rights as international instruments in the Universal Declaration by the United Nations in 1948, a firm foundation was set for human rights as a part of the international arena.⁵⁶

§ 3.2.4.1 The right to self-determination

The struggle for self-determination was enormous both in and outside Western Europe. It was one of the most discussed fundamental rights before and during the twentieth century.⁵⁷ After the collapse of the Ottoman and Austro-Hungarian empires and the establishment of the League of Nations based on US President Wilson's vision, the claims for self-determination ended up in the centre of international politics.⁵⁸ Although the right of self-determination was not meant by the League of Nations to be exercised by oppressed and colonial people, the weakening of the superiority of European states during World War II and the feelings of nationalism amongst colonial people increased the urge to exercise this right.

The right to self-determination proclaimed in the Atlantic Charter of 1941 was a stepping stone towards the promotion of universal rights. It took several decades and vicious struggles against the Western powers, though, for the realisation of the decolonisation of colonial possessions,⁵⁹ arising from this fundamental right.⁶⁰

51 See e.g. Lauren 2003, pp. 71-96, 135-147; Nowak 2003, pp. 20-23; Haas 2008, pp. 73-80.

52 The draft Charter of the United Nations was the result of the negotiations of the great powers at Dumbarton Oaks in 1944, in which much emphasis was put on the sovereignty of states. The great powers consisted by that time of the United States, Great Britain, the Soviet Union and China. Little consideration and attention were paid to the vision of human rights created during World War II. This led to much criticism on the proposals of 1944, which contributed enormously to the development of international human rights. The issue of human rights hereby gained its global importance.

53 This international organisation consisted of various organs. The Security Council, in which the great powers have a permanent membership, was entrusted with world peace-keeping (Arts. 22-32 UN Charter). The General Assembly, consisting of the representatives of all state-members, operates on majority ruling on decision-making (Arts. 9-22 UN Charter). The organ which carries out committee functions for such bodies as the Commission of Human Rights, was the Economic and Social Council (Arts. 55-72 UN Charter). Also instituted was a Secretariat, headed by the Secretary-General, which consisted of the permanent and specialised civil servants of the United Nations (Arts. 97-101 UN Charter). And the International Court of Justice adjudicates in conflicts between states that consented to this (Arts. 92-97 UN Charter).

54 Lauren 2003, pp. 177-193.

55 Article 68 UN Charter; Nowak 2003, pp. 73-75.

56 See e.g. Van Wissen 1989, pp. 12-13; Baehr 1998, pp. 17-21; Ishay 2008.

57 For instance Lauren pays tremendous attention to the matter. Lauren 2003; see also Haas 2008, pp. 61-64.

58 The refusal of the United States to participate in the League of Nations was remarkable, despite the influence of Wilson on the establishment of the League. Lauren 2003, pp. 97-101.

59 The former Netherlands Antilles got its autonomous status based on the exercise of this right in 1954.

60 Ishay 2008, pp. 181-198; see also Lauren 2003, pp. 63-96, 135-166, 233-243.

§ 3.2.4.2 The second half of the twentieth century

After World War II the rivalry between East and West dominated the international spectrum for several decades. The ‘realpolitik’ of State power in international law overshadowed the promotion and realisation of human rights in the first part of the second half of the twentieth century.⁶¹ The independence of African States became in the 1960s ‘the greatest collective extension of human rights in the world’s history’.⁶² With these events the debates on human rights, particularly on the right to self-determination and racial discrimination, gained their position on the agenda of the United Nations. Many States in the Southern hemisphere, the so-called South, partly lost thereafter their commitment to human rights. The many internal affairs concerning violations of human rights, which were either suppressed or denied by these States, confirmed this.⁶³

In the late 1960s, as a result of the developments related to, inter alia, secularism and individualism, civil resistance was registered worldwide, favouring a social revolution, which effectively did not materialise. Afterwards, with, inter alia, the further expansion of the free-market economy, globalisation and the technological revolution, the ending of the Cold War and the collapse of the Soviet Union (USSR) in 1989, and the emergence of the Asian ‘tiger’ nations, a new world order was established. Globalisation and industrialisation led to the flexibility of the labour market, the intensification of human-inflicted damage to the environment, the rise of global migration and the issue of citizens’ rights, the eroding of national distinctions and consequently the further promotion of cultural rights. At the same time, religious extremism emerged in certain societies.

All these events and many others contributed to the redefinition and the energising of the human rights movement in the late twentieth century.⁶⁴ This led to, for instance, the propagating of the human right of development to combat poverty by particularly States in the Southern hemisphere in the course of the 1970s and 1980s. Consequently, a Declaration on the Right to Development was adopted by the UN General Assembly in 1986.⁶⁵ Subsequently, the premise of industrialisation, globalisation and economic growth as a way to attain and secure development in the Southern hemisphere was (partly) replaced by the further realisation of all human rights in this hemisphere. Actually, a paradigm shift in the philosophy of development cooperation took place. This meant that the approach to the development of underdeveloped countries in the Southern hemisphere starting from their (rapid) industrialisation and economic growth was replaced by the human right of development where the eradication of poverty and the effective fulfilment of all human rights of the people became the point of departure in the policies of development cooperation between countries in the North and the South. This shift had ultimately to be assimilated by both donating agencies in the North and the elite of the underdeveloped States, as more

61 Ibid., pp. 211-229; Haas 2008, pp. 80-83.

62 Haas 2008, p. 83.

63 For the historical context of the phenomenon of enforced disappearance in Latin America during the 1960s to the 1980s see Vermeulen 2012, pp. 5-20; see also Nowak 2003, pp. 25-26; Haas 2008, pp. 83-86.

64 Ishay 2008, pp. 246-279; Haas 2008, pp. 90-95.

65 GA A/RES 41/128. Several resolutions were adopted afterwards by the Commission on Human Rights and its successor, the Human Rights Council, urging States ‘to make further progress towards the realisation of the right to development as set out in the Declaration’. See GA A/RES/67/171 (2013).

attention was turned to the situation of (the violation or realisation of) human rights in the receiving countries.⁶⁶

Modern technology in its turn was of great assistance in the struggle for human rights, despite the fact that it has contributed to the creation of weapons of mass destruction and the invasion of privacy. It has enabled human rights movements to monitor, collect, and act on human rights violations. The promotion of information, education and ideas of human rights has also been more effective through these technological means.⁶⁷

§ 3.2.5 *Twenty-first century and the future of human rights*

At the beginning of the twenty-first century a new challenge emerged for human rights movements after the events of 11 September 2001 in the United States. The misplaced 'war paradigm'⁶⁸ introduced by the United States has (in)voluntarily given permission to national Governments to violate acquired fundamental rights of individuals and social (minority) groups as a response to terrorism, despite the fact that this is in contradiction to the essence of human rights conventions of which such States are members. Simply put, the rushed approach and response to terrorism has drastically affected the essence of international human rights law.⁶⁹

And although the conceptualisation of human rights is intimately intertwined with the issues of national security, justice and peace, the global impact of the measures introduced to combat terrorism on human rights law became a very disturbing issue. Many States, including liberal democracies which are the most vigorous fighters for the protection of human rights and the rule of law, are engaged in practices that can be defined as violations of international human rights law.⁷⁰ There is 'a far more serious erosion of respect for human rights and the rule of law than (...) expected.'⁷¹ In general, many of these States have underestimated the implications for the respect and protection of human rights in their fight against terrorism.⁷² The world is confronting currently a major challenge as hard-won progress on the protection of human rights is being tampered with through inappropriate counter-terrorism measures.

In regard to the contributions of the United Nations, it became clear that the UN promotion and protection of the human rights system did not have a principal political organ in charge of human rights. The Economic and Social Council which had been assigned to this duty delegated it to the Commission on Human Rights. And it was during the first decades of its establishment that the Commission accomplished most of its work

66 Nowak 2003, pp. 43-45.

67 Lauren 2003, pp. 279-281.

68 'Assessing Damage, Urging Action: Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights', the International Commission of Jurists, Geneva 2009, pp. 49-60.

69 Ibid., pp. 16-25; see also Lauren 2003, pp. 275-277.

70 This has certainly been the case in countries with past threats of terrorism and its many problems, such as Northern Ireland, Argentina and Brazil. In the end the State itself was turned into a terrorist by applying unlawful methods to combat (internal) terrorism. These methods (e.g. militarisation of the counter-terrorism strategy) finally undermined their democracy and its foundation. 'Assessing Damage, Urging Action: Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights', the International Commission of Jurists, Geneva 2009, pp. 26-46.

71 Ibid., p. 12.

72 Ibid., pp. 159-163.

for the United Nations, namely the study and promotion of human rights worldwide and the drafting of several human rights conventions.⁷³ However, the Commission on Human Rights has been criticised for its (lack of) performance on the protection and promotion of human rights. With the reorganisation within the United Nations in 2005 the Commission on Human Rights was replaced by the Human Rights Council.⁷⁴

The Human Rights Council as a governmental organ consisting of 47 members,⁷⁵ who are representatives of their respective countries, has as its main task the protection and promotion of human rights worldwide. For an effective realisation of human rights and for the maintenance of the quality of the tasks performed by the Council, the Universal Periodical Review has been instated.⁷⁶ States are obliged to submit periodically 'objective and reliable information' on the fulfilment of their obligations under international human rights law. The objective of this review is to supplement the work of the various treaty-based supervising committees and to give an additional opportunity to States to provide insights on the activities they have undertaken to realise the most basic rights of their inhabitants.⁷⁷

Hopefully, the confidence in the UN monitoring and protection system has thereby been strengthened as the United Nations has been heavily criticised for its perceived unwillingness and inability to act upon the violations committed by particularly wealthy and powerful countries.⁷⁸

§ 3.3 Human rights in national and international documents⁷⁹

A distinction is made between the different types of fundamental rights of individuals. Most sources define one group of rights as human rights and the other group as civil rights. In brief, human rights are a compilation of international standards on the position of the State in regard to its own citizens and other individuals. They are not solely individual claims but also collective rights. These norms uphold restrictions on the proceedings of the State in regard to society. Civil rights on the other hand are the fundamental individual rights proclaimed in the national constitution of a State and they are bound up with citizenship of that particular State.⁸⁰

The first known national document on the establishment of rights is Magna Carta Libertatum of 1215. It was not, however, a constitution containing civil rights, but an agreement representing a restriction on the English king by his barons, safeguarding the established ancient customs of a specific social group and due process. The Habeas Corpus

73 Baehr 2001, pp. 57-61; Nowak 2003, pp. 73, 104-107.

74 GA A/Res.60/251.

75 The members are appointed for a period of three years by General Assembly of the United Nations based on GA A/Res. 60/251, Art. 7.

76 GA A/Res. 60/251, Art. 5 para. e.

77 In the case of the Kingdom, it has submitted two reports to date. Unfortunately, both reports, but particularly the first report of 2008, provided information only on the status of the implementation of human rights conventions in the Netherlands. Information on the human rights situation in the Caribbean countries was lacking or very meagre. See A/HRC/WG.6/1/NLD/1 (2008); A/HRC.WG.6/13/NLD/1 (2012). Not surprisingly, the Council of Human Rights made requests to the Netherlands to assist the smaller Caribbean countries with complying with the obligations under the convention and to provide information on the matter. A/HRC/8/31, paras. 30, 38 (2008); A/HRC/21/15 (2012), paras. 33, 53, 55, 63, 83.

78 Reilly 2011, p. 72.

79 For detailed overviews of human rights documents, see Haas 2008.

80 See e.g. Akkermans, Bax & Verhey 1999, pp 30-32; Nowak 2003, pp. 1-5; Kortmann 2005, pp. 388-389.

Act of 1679 and the English Bill of Rights of 1689 as extensions of Magna Carta possessed the same characteristics.⁸¹ These documents obviously did not have as a foundation the idea of individuals as possessors of inalienable and indivisible human rights. The first documents considering human and/or civil rights were the American Bill of Rights of 1791 and the French '*La Déclaration*' of 1789.⁸² These two documents maintained their relevancy up until the proclamation of the Universal Declaration of Human Rights in 1948 by the United Nations.⁸³

With the Universal Declaration the maintenance of the approach that the subject of human rights is a domestic concern of the nation-states was no longer sustainable; the protection of human rights became an international affair.⁸⁴ The internationalisation of human rights led to the adoption of two general, legally binding, international human rights conventions in 1966,⁸⁵ namely the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. Together with the Universal Declaration of 1948 they form the International Bill of Human Rights. The human rights obligations assumed by the Member States apply to the rights formulated in these conventions.

The International Convention on Civil and Political Rights upholds the liberties which qualified as the first generation⁸⁶ human rights. The political and civil rights protect the individual against improper State conduct. They create an area not covered by the State, and which was left exclusively to individuals. The second generation human rights vested in the Convention on Economic, Social and Cultural Rights are characterised as those human rights in which more emphasis is put on the social, economic and cultural development of the individual. For an effective implementation of these rights an active State-government, that institutes governmental policies and invests in the economic and social development of its society, is required.⁸⁷ Beside these two categories of human rights, a third category of human rights is acknowledged, which are the collective rights of people, such as the right to self-determination and the right to a clean natural environment.⁸⁸

Up until now the United Nations has not adopted a convention upholding these collective rights exclusively. Only the right of all people to self-determination with its tremendous historical background is included in the two general human rights conventions.⁸⁹

81 Van der Pot/Elzinga, de Lange & Hoogers 2014, pp. 62-65.

82 Scheltens 1983, pp. 17-19; Van der Pot/Elzinga, de Lange & Hoogers 2014, pp. 251-253.

83 The UN Charter expected, according to Art. 1 para. 3, the following from all states members: '... and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.' Based on this, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights in 1948.

84 Baehr 1989, pp. 30-42; Kooijmans 2008, pp. 353-364.

85 Both conventions were adopted in 1966 by the United Nations, but they came into force in 1976 after their ratification by more than 35 Member States. They came into force in the Kingdom in 1979 (ICCPR: Trb.1969, no. 99 and Trb. 1978, no. 177; ICESCR: Trb.1969, no. 100 and Trb. 1978, no. 178).

86 When literature refers to the different categories of human rights as generations, this implies that one category is more important and of an older date than the other generations. This may seem correct, but an analysis of '*La Déclaration*' showed that the document contained both types of fundamental rights. Literature shows that the distinction made between the categories results in a rigid understanding of the importance of human rights. The categories of human rights are closely interconnected with each other and the different rights are interdependent on each other for their effectiveness. These fundamental rights are named 'categories' in the course of this research.

87 Baehr 1998, pp. 22-26.

88 Nowak 2003, pp. 23-25.

89 Article 1 ICCPR and Art. 1 ICESCR.

The regional conventions containing these types of rights are the African Charter on Human and People's Rights⁹⁰ and the (revised) Arab Charter on Human Rights.⁹¹ In addition to the International Human Rights Bill several other specific human rights conventions were adopted by the United Nations, like the UN Women's Convention.⁹² These specific conventions create mechanisms for the Member States emphasising the protection of human rights of vulnerable groups within a society.⁹³ And they all specifically mention the Universal Declaration on Human Rights as their source or starting point.

§ 3.3.1 *Regional human right documents*

It is not only on an international level that manifestations of international human rights conventions have occurred. They have occurred on a regional level as well. Many regions have created their own human rights instruments inspired by the principles formulated in the Universal Declaration.

Firstly, several Western European countries through the Council of Europe⁹⁴ adopted in 1950 the European Convention on Human Rights⁹⁵ and in 1961 the Social Economic Charter⁹⁶. Worth noting are the effective implementation mechanisms of the European Convention on Human Rights,⁹⁷ through the European Court of Human Rights. Its protection mechanism proved to be even more effective than that of the Convention on Civil and Political Rights due to its supervisory instruments,⁹⁸ as it provides for an extensive

90 Articles 19-24 African Charter.

91 See e.g. Arts. 2 and 37 (revised) Arab Charter on human rights.

92 Other specific international human rights treaties are: (1) the Convention on the Status of Refugees (1951), (2) the Convention concerning the Protection and Integration of Indigenous People (1957), (3) the Convention against Racial Discrimination (1965), (4) the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984), (5) The Convention on the Rights of the Child (1989), (6) Convention on the Rights of Persons with Disabilities (2006); Convention for the protection of all persons from forced disappearance (2006). For a complete list see www.ohchr.org, last visited on 19 April 2015.

93 For a short elaboration on the challenges regarding the protection system offered to vulnerable groups within the Dutch and Antillean societies, see Goldschmidt 2008, pp. 174-182.

94 The Council of Europe was founded in 1949 after World War II by 10 European States to promote democracy and human rights. It adopted the European Convention for the Protection of Human Rights and Fundamental Freedoms, which entered into force in 1953. As of 2014 the Council of Europe, as an international organisation, consists of 47 Member States. Although it gives an impetus to the further development and the general policies of the European Union, it is not an institution of the European Union. The European Union, officially established in 1993, consisting of 28 Member States, has its own institutions, such as the Council of the European Union, the European Committee, the European Parliament, the European Court of Justice and the Court of Auditors. It is a supra-national organisation and its members are bound by its decisions and their proper implementation in their domestic system. See Van Dijk (ed.) 2006, pp. 2-12; Van der Pot/Elzinga, de Lange & Hoogers 2014, pp. 727-743; www.echr.coe.int, last visited on 19 April 2015.

95 The ECHR came into force for the Kingdom in 1954 (Trb. 1951, no. 154).

96 The Kingdom only adopted this treaty in 1980 due to difficulties related to the right to protest (Trb. 1962, no. 3 and Trb. 1963, no. 90). The European Social Charter was revised in 1996 (Trb. 2004, no. 13). And although no alteration was made to its control mechanism, several new rights and guarantees were incorporated. For a short appreciation of the working of the charter, see De Schutter 2009, pp. 425-442.

97 The European Convention on Human Rights is the European equivalent of the International Covenant on Civil and Political Rights and the European Social Charter is the European equivalent of the International Covenant of Economic, Social and Cultural Rights.

98 Through Arts. 19-27 a European Court of Human Rights was established, which adjudicates in disputes in presumed cases of violations of human rights by the Member States.

individual compliance mechanism.⁹⁹ Like many other conventions it created an inter-governmental compliance instrument through which state-members can raise a complaint against another state member in cases of excessive violation of human rights in a particular state.¹⁰⁰

The protection in the Inter-American Human Rights system (IAHRS) in its turn is rather complex. It has the American Commission on Human Rights instituted in 1959 and the Inter-American Court of Human Rights set up in 1979. Yet, it was with the adoption of the Charter of the Organisation of American States (hereafter: OAS) in 1948 that the region had already enacted its own Declaration of the Rights and Duties of Man. The Inter-American Commission on Human Rights was the first entity entitled to supervise and advise Member States on human rights matters based on the Charter of the OAS. From the beginning, it interpreted its authority broadly; so it also investigated human rights situations in the Member States.¹⁰¹ With the enactment of the American Convention on Human Rights in 1969, by the OAS, the Inter-American Court of Human Rights was created.¹⁰² However, not all Members of the OAS are party to the Convention or have accepted the jurisdiction of the Court. As a result, there are three categories of States in this system. Members which have adopted the Convention and recognised the Court's jurisdiction; those States which are party to the convention, yet have withheld their approval from the authority of the Court and the third group which comprises those States that are only members of OAS.¹⁰³

This dual system is thus divided in two parts, namely the charter-based functions which are executed by the Commission and the treaty-based functions which are exercised by both the Commission and the Court. Based on the Convention, individual complaints are first presented at the Commission, where they are reviewed on their merits.¹⁰⁴ The Court has in its turn the competence to adjudicate on disputes in presumed cases of violation of human rights presented by a Member State or the Commission. Thus, contrary to the European protection system, an individual compliance mechanism has not been instituted. Accordingly, the Court receives its cases through the Commission, after domestic remedies have been exhausted and after completion of the process at the Commission. Alongside this authority it also has an advisory function. So, it gives opinions at the request of Member States of the OAS and organs of this organisation on human rights matters.

Although the Court initially had major constraints on its ability to enforce the American Convention of Human Rights, related to challenges connected to the then authoritarian regimes and democratic tradition of American States and a structural lack of disposable funds, it has been able to carry out its duties resourcefully. Its decisions impacted the domestic legal systems on many levels. Various Member States have even transformed aspects of their legal systems and policies following its case-law. It employs a variety of instruments that it

99 For the working of the individual compliance mechanism see Arts. 28-32 ECHR.

100 The inter-governmental mechanism is regulated by Arts. 33-46 ECHR. This mechanism has never been utilised. Nowak 2003, pp. 27-30 and pp. 67-69.

101 Medina Quiroga 2012, pp. 519-522.

102 The American Convention on Human Rights, 'Pact of San Jose, Costa Rica' was adopted on 22 November 1969 and it entered into force on 18 July 1978. Visit www.oas.org/en/sla/treaties_agreements.

103 Harrington 2012, pp. 2-3; Garcia-Sayán 2012, pp. 104-105.

104 *Ibid.*, pp. 2-5; Medina Quiroga 2012, pp. 527-535.

has at its disposal in its assessments of human rights violations, starting from a dignified and holistic approach and not solely from a legalistic and compensatory approach.¹⁰⁵

The third regional human rights convention, the African Human Rights Charter,¹⁰⁶ was adopted by the Organisation of African Union in 1981. Two main characteristics of the African Human Rights Charter, besides the recognition of the ‘people’s rights’, are: (1) the acknowledgment that individuals also have duties towards others, their community and the State, and the recognition of (2) the right to development.¹⁰⁷ Its supervisory body, the African Commission, is in charge of the promotion and protection of the obligations of State-parties enshrined in the convention through periodic State-reports.¹⁰⁸ Individual and interstate compliance mechanisms are also provided for. Yet, the recommendations of the Commission are not legally binding. With the adoption of the Protocol to the African Charter establishing the African Court on Human and Peoples’ Rights in 1998,¹⁰⁹ an institution which can take legally binding decisions, the shortcomings of the protection system have been lifted. The obligation for the State-parties to comply with the judgment of the Court within a delineated timeframe and to guarantee its execution reveals a strong implementation mechanism. The enactment of the African Women’s Rights Protocol by the African Union is rather interesting; an international agreement which provides for an oversight of the specific situation of African women by the African Union, the successor to the Organisation of African Union since 2000. This Protocol entered into force in 2005.¹¹⁰

Lastly, in 2004 is the revised Arab Charter of Human Rights adopted by the League of Arab States.¹¹¹ This regional charter contains many shortcomings in its protection mechanisms and it upholds provisions which are in contradiction to international law. It only provides for a reporting procedure, as no mechanisms for complaints or inquiry procedures were instituted. All in all, the Charter is a mere reflection of the level of acceptance of fundamental rights in Arab States.¹¹² As far as the scope of this research is concerned, a detailed elaboration on the implementation mechanisms of these regional conventions is superfluous.

Noteworthy is the fact that the European Convention on Human Rights is of vital importance for human rights protection in Curaçao, as this regional convention is enforced in its legal system based on the territorial clause.¹¹³ As strange as it may sound, the American Human Rights Convention is not applicable in Curaçao, as this non-independent island-territory is not permitted to become a member of this regional convention. Consequently,

105 Ibid. pp. 5-23; Garcia-Sayán 2012, pp. 105-111.

106 The African Charter on Human and People’s Rights was adopted on 27 June 1981, and it entered into force on 21 October 1986. OAU Doc. CAB/LEG/67/3/rev.5, 21 I.L.M. (1982), available on www.african-court.org, last visited on 19 April 2015.

107 Viljoen 2009, pp. 503-525.

108 Article 30 African Charter.

109 The Protocol came into force in 2004, available on www.african-court.org.

110 The African region also has its own African Children’s Rights Committee, which according to Viljoen has wider powers than the UN Committee on the Rights of the Child. Viljoen 2009, pp. 506, 513-524.

111 This original Charter was adopted on 15 September 1994, but it did not enter into force. The revised Arab Charter of 2004 finally entered into force after a long process on 15 March 2008. The text is available on www.humanrights.ch/en/standards/other-regions-instruments/arab-charter-on-human-rights/; see also Nowak 2003, pp. 253-256; Rishmani 2009, pp. 529-532.

112 Rishmani 2009, pp. 529-545.

113 The ECHR became effective for the former Netherlands Antilles in 1955, based on Arts. 1 and 56 ECHR. It has been valid in Curaçao since 10 October 2010.

only the European implementation and protection system and their significance for the human rights protection system of Curaçao are addressed when and if necessary. One has to bear in mind though that the regional and international protection systems are subsidiary and complementary to the domestic human rights protection system.

§ 3.3.2 *Specific international human rights conventions based on the equality principle*

The United Nations was founded for the guarantee of State security and world peace, and for the protection of human rights, including the fight against discrimination and inequality. The issue of discrimination was most prominent during the decades of the struggle against the Apartheid regime of South Africa. The first international human rights convention introducing a prohibition on racial discrimination was the Convention on the Elimination of All Forms of Racial Discrimination of 1965.¹¹⁴ This convention upholds prohibitions of any distinction or exclusion based on race, colour, and descent, national or ethnic origin in the public sphere.¹¹⁵

The premise in the struggle for human rights remains first and foremost the fight against any assault against human dignity. One of the most important conventions in this regard is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹¹⁶ With the adoption of this specific convention in 1984 by the United Nations, an important contribution was made in the struggle against inhumane treatment and torture. The main objective of the convention is the criminal prosecution of torture by all Member States. Despite the explicit prohibition and abolition of torture and inhumane treatment, the respect for and realisation of the rights enshrined in this convention remain the main points of concern, particularly after the attacks of 11 September 2001.¹¹⁷

The promotion and protection of human rights concerns the fundamental rights of every individual, including children. Subsequently, the United Nations became concerned with discrimination against children, as well as gross violations of and attacks on the rights of children, just after its establishment. The need for the creation of a specific convention on human rights for the protection of children increased. It adopted in 1959 the Declaration on the Rights of the Child¹¹⁸ which upheld important principles on the needs of children. This Declaration proved not to be sufficient and finally in 1989 the United Nations adopted the Convention on the Rights of the Child.¹¹⁹ This convention became the most universally applicable convention with the signing and ratification by almost all the States of the world.¹²⁰

In the course of time the United Nations has also adopted several specific conventions, such as the Convention on the Prevention of the Punishment of the Crime of Genocide of 1948,¹²¹ the Convention on the Suppression and Punishment of the Crime of Apartheid of

114 GA Res. 2106 (XX); Nowak 2003, pp. 83-86.

115 Article 1 CERD.

116 GA A/RES/39/46.

117 For an assessment, see *Assessing Damage, Urging Action: Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights*, the International Commission of Jurists, Geneva 2009.

118 GA A/RES/1386 (XIV).

119 GA A/RES/44/25.

120 Only the United States of America (US) and Somalia have not ratified this treaty yet. The United States signed the convention in 1995 and Somalia in 2002. For the list of ratifications visit www.treaties.un.org.

121 GA Res. 260 (III) A.

1973,¹²² the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990,¹²³ the Convention on the Rights of Persons with Disabilities of 2006¹²⁴ and shortly after that the Convention for the protection of all persons from enforced disappearance¹²⁵ of 2007.¹²⁶ In regard to the protection of the fundamental rights of women several declarations and conventions¹²⁷ were adopted. These international instruments were developed in the struggle against the persistent unequal treatment of women and gender-based discrimination. As far as the scope of this study is concerned, an elaboration on the process concerning the adoption of the Women's Convention follows in § 3.10.

§ 3.4 The distinction between the categories of human rights

Literature acknowledges three categories of human rights. Each category or dimension is bound up one way or the other with certain historical and/or philosophical developments. The first category is civil rights which are enforceable by law against the State. In the narrow interpretation of these classic liberal rights, the State does not have any positive obligation to act on, protect or promote these rights.¹²⁸ On the other hand, the premise about the realisation of economic, social and cultural rights was that the State had an obligation to ensure them by taking positive measures and that they were, unlike civil rights, under no circumstances enforceable.

The dichotomy between these categories of human rights turned out to be not as strict or absolute as first thought. It only serves for a better understanding of the qualification of the rights and the intertwined relationship that exists between them.¹²⁹ Unquestionably, the creation of two separate conventions by the United Nations did strengthen this distinction. Since the recognition of the universality, indivisibility, interdependence and interrelatedness of human rights, in the Vienna Declaration and Programme of Action in 1993,¹³⁰ the strict distinction, based on, *inter alia*, (wrongful) perceptions on the degree of enforceability, that the second category of rights are not human or legal rights, the social dimension of civil rights and the vagueness of social and economic rights, has become blurred.¹³¹ And with, *inter alia*, the adoption of the African Charter in 1981 and several other international conventions,¹³² where the generations of rights were brought together, the reintegration and intertwining of the dimensions of human rights were accepted.¹³³ Moreover, the adoption of an Optional Protocol to the International Convention on Economic, Social and Cultural

122 GA A/RES/3068 (XXVII). With the abolition of Apartheid in South Africa the convention lost its importance and the work of the committee appointed for the examination of the states reports was discontinued.

123 GA A/RES/45/158; see e.g. Nowak 2003, pp. 88-96; Lauren 2003, pp. 247-250; Haas 2008, pp. 215-222.

124 GA A/RES/61/106.

125 GA A/RES/61/177.

126 For an extensive assessment on the working of this convention and the determination of State responsibility in its implementation, see Vermeulen 2012.

127 See § 4.9.

128 Nowak 2003, pp. 23-24; Burkens 2006, pp. 121-129.

129 Van der Pot/Elzinga, Lange & Hoogers 2014, pp. 254-255.

130 A/Conf. 157/23, part I, para. 5.

131 Riedel 2012, pp. 133-143.

132 See e.g. the UN Women's Convention (1979), and the UN Convention on the Rights of the Child (1989).

133 Donnelly 2003, pp. 27-31; Henrards 2008, pp. 145-148; Reilly 2011, p. 73.

Rights in 2008,¹³⁴ and its entry into force in 2013,¹³⁵ gives a new dimension on the realisation and interpretation of economic, social and cultural rights on an equal footing with civil and political rights.¹³⁶

Arguably for the realisation of any category of human rights, both State-Government abstention and also intervention are sometimes required. The typology of State obligation towards the realisation of human rights implies that the State has an obligation to respect, protect and fulfil these rights.¹³⁷ The first State-obligation upholds the obligation not to interfere with the human rights of its citizens; the second element entails the State's obligation to take measures to ensure that third parties do not interfere with the enjoyment of human rights of others and finally there is the obligation of the State to fulfil the steps that ought to be taken by the State for the realisation of fundamental rights of individuals. This last obligation entails both the obligation to facilitate, which implies the strengthening of the accessibility and availability of resources for people, as well as the obligation to provide for the right directly.¹³⁸

Lastly, the collective rights of people, the third category or dimension of rights, are driven by the premise of universalism and solidarity. These rights were primarily promoted by the States in the Southern hemisphere, during their struggle for self-determination and development. The bearers of these rights are people or collectives, not individuals. The key concern for their effectuation is the proper definition of what qualifies as "collectives" and "people", and also whether individuals might be holders of these rights as well.¹³⁹

§ 3.4.1 *Interrelationship between the categories of human rights*

Donnelly comments that the existing dichotomy between the categories of rights obscures the possibilities for individuals to live a life with dignity. It only leads to more human rights violations by the elite groups which deny the proper implementation of particularly economic, social and cultural rights. Therefore he argues for a rethinking and reconsideration on the categories of human rights, where more emphasis is put on the existing social realities.¹⁴⁰

The most relevant differences between the first and the second categories of human rights can be enumerated as follows: (1) the negative and the positive State obligations, (2) the availability of resources to fulfil the obligations and (3) the enforceability of the rights. There are several nuances on these differences developed by human rights committees and courts of justice. For instance, political and civil rights uphold positive obligations as well, meaning that public funds are required for their realisation and implementation. The contributions

134 GA A/RES/63/117.

135 The protocol entered into force on 5 May 2013. As of 2014 seventeen States have ratified this protocol. The protocol introduces the individual complaints procedure (Art. 2), the interstate communications procedure (Art. 10), and the optional inquiry procedure (Art. 11). Visit www.ohchr.org/EN/ProfessionalInterest/Pages/OPCESCR.aspx.

136 This was the process that had already been initiated in the 1990s. For an assessment on the process and the importance of the enactment of an Optional Protocol to the International Convention on Economic, Social and Cultural Rights, see de Albuquerque 2010; Riedel 2012.

137 Baehr 2001, pp. 32-36; see also Nowak 2003, pp. 48-51.

138 For a better comprehension of the States' obligations, see CESC General comment no. 12, E/C.12/1999/5, para. 15 and CESC General comment no. 16, E/C.12/2005/4, paras. 16-21; CEDAW GR 25, para. 4.

139 Baehr 2001, pp. 42-48; Riedel 2012, pp. 134-136.

140 Donnelly 2003, pp. 32-33.

of civil and political rights through case law to the enforceability of economic, social and cultural rights are also registered. On the other hand, by a progressive interpretation of economic, social and cultural rights, they are becoming more like first generation rights. The general comments and recommendations of treaty bodies are very helpful and explanatory on this issue, particularly regarding the granting of enforceability to economic, social and cultural rights.¹⁴¹ All this has led to the erosion of the distinctions between the categories of human rights.

In the case of women's rights the experiences of women in both the private and the economic and public sphere have blurred the distinctions. It seems that the Commission on the Status of Women in the creation of the Declaration on the elimination of discrimination against women in 1967 has never made any strong distinction between the categories of rights.¹⁴² This is the reason why both categories of rights are enshrined in the Women's Convention. Holtmaat comments strikingly that 'in the Convention these rights flow into each other and supplement each other'.¹⁴³ Simply put, for an effective implementation, interpretation and protection of all human rights and their mutual relationship, a thorough examination of the general recommendations of the supervisory Committees and case law by the courts and the treaty-based bodies is of supreme importance. The indivisibility and the interdependence that exist between the categories of human rights have resulted in an inter-connectedness that is essential for the effective realisation of fundamental rights.

§ 3.5 Claims of cultural relativism and universality in general

A factor which has influenced the further realisation of human rights is connected with the distinction between the universal claim of these rights and cultural relativism. The discourse on the universality of international human rights law and cultural claims has partly determined the way these rights are perceived and owned by societies. The theoretical framework of human rights beginning with the universal claim as formulated during the Enlightenment and later on by the Universal Declaration is most prominent. It starts from a liberal approach which is most notable in liberal Western democracies.

The doctrine of cultural relativism defends the cultural, religious and traditional identity of non-Western societies against the imperialistic claims of universal human rights law. Furthermore, according to this theory, the universalistic claim simply provides a foundation for the continuation of '[recycling] the colonialist project of remaking the world in the image (...) of the West' and maintaining the 'cultural subordination and economic exploitation (...) masked as a "civilising mission"'.¹⁴⁴ This forms the foundation for the challenging attitude and criticism of non-Western societies towards human rights. They object to the non-inclusion of non-Western people and culture in human rights law.

Despite the many difficulties connected with the relationship between human rights and cultural (and religious) diversity, human rights can be seen as catalyst for positive (emancipating) cultural reforms. Thus, not surprisingly, many scholars have made

141 Henrards 2008, pp. 149-174.

142 Fraser 2002, p. 47.

143 Holtmaat 2004, p. 151 (Appendix).

144 Van der Wal 1998, pp. 248-252; Marks & Clapham 2005, p. 387.

interesting contributions to this controversy.¹⁴⁵ In many ways, relativism in the context of human rights can be comprehended as an argument for the contextualisation of these rights. The argumentation of cultural relativism is based on different approaches, which imply that human right norms should obtain their meaning from specific social, cultural, economic and political frameworks.

On the other hand, one can argue that the claim of universality of human rights,¹⁴⁶ considering the wording of the Universal Declaration of Human Rights, is based on a cross-cultural consensus. By emphasising the commonality within human rights, regardless of a particular interpretation based on a societal context, a stronger foundation is to be found for the universal claim. As stated by Marks and Clapham, another approach to universality is to consider the conceptualisation of human rights as 'instruments of change, and from a conception of cultures as a context of change'.¹⁴⁷

It appears, though, that the current approach implies the accommodation of the cultural diversity and the societal context within the universal claim of human rights as a sort of reconciliation between the two theories.¹⁴⁸ In a contribution on the matter Addo argues in favour of this. He suggests the adoption of a legal approach wherein the theories should complement and reinforce each other, particularly for the advancement and strengthening of the supervisory work of the treaty bodies.¹⁴⁹ This reconciliation through the legal approach would occur as human rights, as ideals and aspirations, are transformed into enforceable legal instruments, where the cultural context is incorporated or used as a (human rights) guideline. In the interpretation of human rights adopted by the treaty bodies,¹⁵⁰ he sees compatibility between human rights ideals and cultural diversity and in this sense '(...) culture is considered an important human right as well as a useful factor in the determination of the scope of other rights'. Thus, the objective ought to be that these two approaches should complement each other for the strengthening of the fulfilment of human rights enshrined in conventions and domestic law, and it would appear that the supervisory bodies have delivered a valuable contribution to this already.¹⁵¹

§ 3.6 Historical background of the women's movement

It has long been acknowledged by many that the issue of the status of women was entirely ignored or denied in the early ages by the State and even by great thinkers like Locke. In comparison with the issue of discrimination against Jews and slaves, women did not get sufficient attention at all. The point of view of the Western European societies was that women belonged in the private sphere of the home.¹⁵² Fraser remarked that there are three controversies that defined the consideration of the position of women. Firstly, the ignorance

145 See e.g. Donnelly 1984; Brems 1997; Van der Wal 1998; Cliteur & Van den Eeckhout (red.) 2001; Baehr 2001; Freeman 2002; Donnelly 2003; Marks & Clapham 2005; Bielefeldt 2009; Addo 2010.

146 The universality of human rights has been recognised in the Vienna Declaration and Programme of Action of 1993 and confirmed in the Beijing Platform for Action of 1995. See A/Conf. 157/23, part I, para. 5; A/Conf.177/20/Rev.1, para. 9.

147 Marks & Clapham 2005, pp. 387-398; Howson 2009, pp. 1-5.

148 Viaene & Brems 2010, pp. 204-210; Addo 2010, pp. 603-608.

149 Addo 2010, pp. 601-664.

150 Ibid., pp. 628-659.

151 Ibid., pp. 619-623; Howson 2009, pp. 1-5.

152 Hunt 1996 (ed.), pp. 10-11; Donnelly 2003, pp. 60-61; Ishay 2008, pp. 47-61.

of women's history which enforces the subordination of women, secondly the argument that the struggle for women's rights is primarily a Western or Northern effort and finally that 'feminism is a struggle pursued by elite women.'

History shows that the struggle of women had already started in the fifteenth century, long before the period of the French Revolution.¹⁵³ The first indications of the recognition of women's rights and against gender-based discrimination were noted just before the French Revolution, through the views expressed by, inter alia, the Marquis de Condorcet (1743-1794) and the activist Palm d'Aelders (1743-?). Olympe de Gouge (1748-1793) also addressed the issue of gender equality in 1791, after women's rights were completely excluded from the '*La Déclaration*'.¹⁵⁴ In her turn, Wollstonecraft (1759-1797)¹⁵⁵ urged in her contribution in 1792 for provisions on rights for women.¹⁵⁶ Although by the end of the eighteenth century the feminist movement had become visible and strong, it did not have any real political influence at that time.

It remains difficult, though, to point to one exact moment as the starting point of the movement. Many writers assume that the grounds of the movement were interconnected with the ideas formulated during the Enlightenment period and in the nineteenth century with existing views on the (social) position of women. The initial struggle focused primarily on the pursuit of political and civil (voting) rights for women.¹⁵⁷ One of the few thinkers of the modern time who wrote about the subordination of women was John Stuart Mill. He addressed the injustice which women suffered in regard to, inter alia, marriage, property and law; social and legal constructs in which women were denied their fundamental rights.¹⁵⁸

Although the struggle against traditional gender oppression, particularly in England and the United States, did not produce the expected results, it put in place the foundation for the further development of women's rights in the twentieth century. In fact it was the struggle for the abolition of slavery which motivated the mobilisation of women in their struggle for the elimination of discrimination and promotion of women's rights. And despite the fact that the women's movement developed in Western societies and despite the existing differences in the origins of the movement,¹⁵⁹ the required agreement among and the awareness of the movement came at the end of the nineteenth century. With the establishment of the International Women's Council in 1888 in the United States and after that of the International Woman Suffrage Alliance in 1904 the movement was finally established at the international level. These developments stimulated the foundation of local women's organisations.¹⁶⁰

The overall resistance against women's suffrage faded due to the contribution of women during World War I. Women's rights received attention after World War I from the League of Nations. And in Eastern Europe, as a result of the Bolshevik Revolution, equal rights

153 Fraser 2002, pp. 15-22.

154 Van Eikema-Hommes 1981, pp. 235-238; Maris & Jacobs 1997, pp. 215-227, 237-272; Ishay (ed.) 2007, pp. 176-180.

155 Hayden 2001, pp. 101-108; Ishay (ed.) 2007, pp. 181-188.

156 See e.g. Fraser 2002, pp. 23-25; Ishay 2008, pp. 107-116; Haas 2008, pp. 51-52.

157 See Käppeli 1993, pp. 405-407; Hunt 1996 (ed.), pp. 26-29.

158 Maris & Jacobs 1997, p. 229; Lauren 2003, p. 50.

159 In this sense I refer to the movement as developed by white Western women. Black feminism did not form part of this development.

160 Käppeli 1993, pp. 409-416, pp. 423-428; Ishay 2008, pp. 160-165.

were granted to women as well. These developments led to the adoption of a charter by the International Woman Suffrage Alliance in 1920, which put forward several types of rights for women. The setback in these positive developments came with the rise of Nazism and the outbreak of World War II. New energetic efforts were put into the women's rights movement after World War II, with the establishment of the United Nations in 1945.

The second wave of feminism became visible in the late 1960s.¹⁶¹ Although women obtained the right to vote¹⁶² in the early twentieth century in Western countries, they did not enjoy much participation in public or political life in many societies. The persisting patriarchal (family) structures and their supporters kept women in their subordinated roles. The main objective of the second wave of feminism became therefore the accomplishment of economic independence for women as many of them who got the opportunity to pursue higher education were confronted with a dilemma as they remained restricted within the confinement of their homes. The groups of well-educated women, together with the New Left, are considered to be responsible for the emergence of the second wave of feminism.¹⁶³ They fought for the accomplishment of the full participation of women in the educational and labour sectors.

§ 3.7 The dichotomy between the private and the public

It is in many societies internalised and accepted that women's traditional roles unfold in the private domain. The impact on the emancipation of women of the dichotomy between the public and the private and, tied to that, the unequal division of duties between the genders, is undeniable. Women are associated with the ethic of care, as care for others is their (moral) obligation, which in general receives little recognition and validation by the State or society.¹⁶⁴ Therefore, the resistance of feminism to this dichotomy and its consequences on the social roles of men and women is understandable.

In the early days the engagement of women in the household included the performance of labour in and outside the home. The development towards the modern nuclear family structure in Western societies resulted in the distinction between the production-type labour performed by men that is connected with the public sphere on one hand and the marginalised, reproductive labour and care performed by women which is identified with the private sphere on the other hand. Simply put, the dichotomy between the public and the private is related to capitalism, the segregation in the labour sector and the modernisation of (Western) societies and family structures.

The maintenance of the dichotomy leads to the lack of proper protection offered to women, particularly against domestic violence, based on the presumption of the non-interference by the State and thus the absence of public scrutiny in the private sphere. Additionally, this distinction reaffirms the imposed ethic of care on women by the labour

161 See e.g. Coole 1988; Brinkgreve 1988; Ishay 2008; Lauren 2003.

162 For example, women obtained their suffrage in 1922 in the Netherlands. In 1948 general suffrage was introduced in the former Netherlands Antilles. Van Rijn 1999, pp. 29-36; Van der Pot/Elzinga, de Lange & Hoogers 2014, pp. 328-329.

163 Hooks 2000, pp. 44-47.

164 This claim is developed by Carol Gilligan in her studies on moral development. According to her there are two moral codes, the female ethic of care and the male ethic of justice. The latter is grounded on an abstract systematisation of rights and rules. Allen 1998, pp. 276-293; Mullally 2006, pp. 2-4.

market (and by States) which maintains their roles in the confinement of their homes. Therefore, according to Charlesworth, this distinction should be challenged by taking the rights discourse into the private realm.¹⁶⁵ This has partially been accomplished by the incorporation of a provision on the family rights of women¹⁶⁶ in the Women's Convention.

§ 3.8 Mainstreams of feminism

Feminism is concerned with the empowerment of women's subjectivity in the political sense. Within the initial movement two mainstreams were developed almost simultaneously in the nineteenth century, which were liberal and socialist feminism. The latter founded its basis on experienced class struggles and the uprising of socialism. Other mainstreams, such as radical feminism, came into being later on. To help in understanding this, I will now explain the essence of these mainstreams.

First of all, the goal of liberal feminism was, from the beginning, the attainment of the voting right for women, so they could participate in the public sphere. This was to be accomplished without challenging the patriarchal societal structure and within the existing legal structure, which formed the foundation for the structural subordination of women in the first place. In regard to legal matters, the initial fight and critique of liberal feminism was primarily directed to the marital subordination of women. The movement dealt with the right to (higher) education, regulations on prostitution, the right to vote and the right to equal payment for equal work. The objectives of contemporary liberal feminism remained effectively the same, as it starts from equality between men and women within the valid legal system, without challenging the male dominated societal system(s).¹⁶⁷

Socialist,¹⁶⁸ i.e. Marxist, feminism, contrary to the liberal approach, started from the subordination of the working-class, including women, based on the exploitation of the lower social classes by the upper class. The scholar Engels underlined and amplified this traditional approach by stating that the subordination of women was the result of the development of the patriarchal family structure, due to the creation of private ownership. The concept 'patriarchal' implies the phenomenon of the subordination of women by men, where all the economic and social power lies in the hands of the menfolk.¹⁶⁹ Braidotti underlined this most strikingly as she stated that '(...) woman is connected to patriarchy by negation'. Women are defined by the standards of others, as part of a patriarchal construction. In such a structure they are denied their most basic rights and freedoms.¹⁷⁰

Several authors have disputed the traditional socialist approach as they pointed out that it did not provide a proper explanation for the persisting subordination of women, not even in the labour market. The subordination of women was not only the result of capitalism, but also of the mechanisms inherent in the patriarchal (family) system. These

165 See e.g. Braidotti 1990, p. 6; Waaldijk 1993, pp. 31-35; Charlesworth 1994, pp. 72-76; Bunch 1995, pp. 11-17; Reilly 2011, p. 64.

166 Article 16 Women's Convention.

167 Brems 1997, pp. 136-137.

168 Socialist feminism can be divided into two mainstreams: dual socialist feminism and unified socialist feminism.

169 See e.g. Steggerda 1993, pp. 77-80; Coole 1988; Collins 2009, pp. 6-11.

170 Braidotti 1990, pp. 2-6.

two basic principles formed the ground for contemporary socialist feminism.¹⁷¹ Therefore, the elimination of the subordination of women would have to be accomplished through the eradication of private ownership and the existing family structure, whereby women would obtain the opportunity to participate in the labour process. The aim of socialist feminism is the alteration of the existing perceptions of society and the creation of a more woman-centred societal structure.¹⁷² For this approach, ideological and material factors were responsible for the inequality among the genders. However, both the traditional and the contemporary socialist approaches lost their influence during the 1980s as the radical mainstreams gained more ground. More attention was focused on the symbolic factors that enforced the unequal treatment of women rather than the material factors.

As the early approaches did not really challenge the suppressing (male) societal structures, the formation of the radical mainstream within the movement emerged. This mainstream altogether rejects the dominating political theories as being patriarchal instruments. It also addresses the sexual deprivation experienced by women, considering that women are discriminated against based on the imposition of a male sexual perception.¹⁷³ For radical feminists the patriarchal (family) structures remained responsible for the oppression of women. Their goal is therefore the transformation of the masculine perception of the world and the domination of women by men.¹⁷⁴

§ 3.8.1 *The psychoanalytic approach of feminism*

Effectively, women were not only confronted with external limitations, imposed by patriarchal social structures, but also with internal limitations. The psychoanalytic mainstream addresses the psychological conflicts of the newly developed feminine ego of independence, and the assertiveness and self-confidence of women. These characteristics are ideals related to the male, which became important for and applicable to women. Emancipation and freedom resulted in physical and mental strain for many women, as they had the desire and obligation to combine motherhood and companionship with their (professional) careers. The labour market, designed on a masculine model, did not take the necessities of women into consideration. The social and legal mechanisms needed to help discharge women from their burdens were either not present or they were insufficiently introduced and/or applied.

So, as pointed out by Braidotti:

if emancipation of women meant the full adaptation of male-standards which for centuries have been introduced and applied to keep women dominated, then the process proved to be a failure. The idea that one can wipe out centuries of exclusion and subordination by solely the incorporation of women into the labour sector and representative bodies was too simplistic and ridiculous.

171 This correlates with the distinction given by Charlesworth between the mainstream approaches, namely liberal, cultural instead of social and radical feminism. Cultural feminism propagates the distinct ways of reasoning between men and women, which lies in the biological and the psychological structure between the sexes, rather than the equality of the sexes. Hence, for the accomplishment of the advancement of and real equality for women, the differences between the genders have to be taken into account and valued. Brems upholds the same distinction. See Charlesworth 1994, pp. 63-71; Brems 1997, pp. 137-141.

172 See e.g. Coole 1988; Steggerda 1993; Käppeli 1993, pp. 416-423.

173 Steggerda 1993, pp. 77-84; Brems 1997, p. 139; Mullally 2006, p. 12.

174 Brems 1997, pp. 140-141.

The only way the position and situation of women can improve is through the rethinking of the societal ruling. Empowerment of sexual differences, the rejection of sexism and racism and the acceptance of differences are imperative, as mentioned by Braidotti. Moreover, only the acceptance of diversity, multiplicity and complexity can provide society with the necessary tools to address the challenges of humanity, particularly in regard to the elimination of the subordination of women.¹⁷⁵ Thus, the development of this mainstream was a logical response to the internal challenges which women and societies were facing.

§ 3.8.2 *Black feminism*

Many of the premises of feminism and its mainstreams which were developed and applicable in rather homogeneous white Western societies were not adequate for predominantly heterogeneous (black) societies, as these societies start off with internalised presumptions of white superiority, inequality and patriarchal power structures. As a matter of fact, the feminist approaches which proclaimed a universalistic approach did not correlate with the realities of non-white women in other parts of the world. The most prominent mainstream, liberal feminism addressed mainly the oppression suffered by well-educated, middle-class white women and this approach dominated the feminist discourse.

Consequently, the mainstreams were, at a certain point, forced to consider and incorporate a contextualised and intersectional analysis in their theories, as they were accused of ethnocentrism and racism by, in particular, black women in the United States. The grounds of black feminism developed in North America by African American women in the 1960s provided insights on the subordination and oppression suffered by black, i.e. non-white, women as their struggle was neither served by the racism movement nor by the (white) women's movement. The complexities lay fundamentally in the racial, class, sexual and psychosexual experiences of black (non-white) women.¹⁷⁶ This approach exposed the discrimination against black (non-white) women based on the intersection of skin colour with gender and class.¹⁷⁷ Accordingly, the assumptions made by the liberal, contemporary Marxist and radical mainstreams were challenged by the historical and contemporary position of black women. Nonetheless, some aspects of these mainstreams remain useful for the comprehension and explanation of the position of black women and poor white women in society.

It would be a misconception to consider black feminism as a subsection of white feminism. Like white women, black women for centuries were seen as part of the collectivity, while they were denied any identity and subjectivity based on their gender, and their race, i.e. ethnicity.¹⁷⁸ Moreover, Hooks makes it clear that the reason for the uprising of black feminism lay in the fact that the contemporary feminist movement failed in many ways to address and incorporate the suffering of black (non-white) women in its fight for the liberation of women. And as more (white) women obtained the desired privileges, the collective struggle lost its meaning and individual opportunism undermined its strength.¹⁷⁹

175 Braidotti 1990, pp. 8-12.

176 See e.g. Crenshaw 1989; Charlesworth 1994, pp. 62-63; Hooks 2000 (a); Hooks 2000 (b); Collins 2009.

177 For more details on the legal aspect of the concept intersectional discrimination see § 7.5.

178 See e.g. Crenshaw 1991; Pattynama 1993, pp. 157-160; Reilly 2011, pp. 71-74.

179 Hooks 2000 (a).

Seeing that the (liberal) contemporaneous approach of feminism, which emphasises individualism, fits in more with the dominant liberal mainstream and it fails to challenge male-dominated (patriarchal) social structures, a more critical and radical approach was not encouraged. Liberal feminism was finally not capable of expressing and dealing with the situation of various groups of women (including poor white women) as it was unable to comprehend the inter-relatedness of gender, race and class oppression. It tended to address the subordination of women from gender essentialism.¹⁸⁰ This is the main reason why the black, i.e. postcolonial, mainstream came into being and consequently promulgated fundamental criticism of the gender essentialism of white feminism.¹⁸¹

Regarding this criticism, however, the following interpretation of the 'universality claim' of feminism should be taken into consideration. So, as pointed out by Sevenhuijsen, if we consider equality and justice to be key aspects of a universal morality, then the main goals of feminism have to qualify as universal claims as they depart from the principles of equality and freedom for women.¹⁸² This implies equality and freedom for all women regardless of the colour of their skin and social class.

Black feminists showed however that differentiation should be the key element when considering the female subject. Its criticism of psychoanalytic feminism, for instance, was that it attempted to provide a sole definition of the female subject. Differentiation among women should be the point of departure. For black feminism the differentiation does not only lie in the gender distinction, but also in the internal differentiations among women based on their class, race, ethnicity, sexual preferences, age and other relevant aspects.¹⁸³

§ 3.8.3 *Caribbean feminism*¹⁸⁴

Ethnicity and race play an important role in multi-ethnic and multi-cultural societies. These factors, accompanied by ethnocentrism and racism, which are intertwined with the Western hierarchical white versus black paradigm grounded in Christian doctrine, are the premise of white superiority, black inferiority and power relations.¹⁸⁵ Not surprisingly, the meaning of feminism as a process of consciousness among women in the Caribbean region is deeply connected with class, race, and ethnicity, colonial and neo-colonial relationships. The struggles which Caribbean women face within systems which are fundamentally exploitative of (weak) social groupings have determined the interpretation which feminism has obtained on a regional and domestic level.

According to Antrobus, the feminist theory developed in the Third World, particularly in the Caribbean region, has the objective of challenging and transforming (social, political, economic) structures that maintained the subordination and oppression of women. Next to the historical factors that have influenced the position of women in this region, the context

180 See e.g. Crenshaw 1989; Crenshaw 1991; Hooks 2000 (b), pp. 1-17; Hooks 2000 (a), pp. 37-43, 55-60; Collins 2009.

181 Essentialism implies that, independent of factors like race, class and sexual orientation, there is a unitary women's experience that is shared by all women at all times. Pattynama 1993, pp. 161-167; Southwell 1994, pp. 359-364; Reitman 1997, pp. 106-107; Hooks 2000 (a); Nayak 2013, pp. 85-86.

182 Sevenhuijsen 1990, pp. 2-4.

183 This concerns the concept of intersectionality, which is examined in Chapter 7.

184 This also comes under the broader terms of 'postcolonial feminism' or 'transnational feminism'. Collins 2009, pp. 251-268; Reilly 2011, pp. 60-76.

185 Pattynama 1993, pp. 157-160; Hooks 2000 (b); Collins 2009.

and the internal process of awareness-raising also have to be taken into account.¹⁸⁶ In her contribution to the matter, Cuales also points out that, when analysing the development of feminism in the Caribbean, one has to confront and address the reality of race and ethnicity in the Caribbean societies as well. It has to be recognised that women in general, but Caribbean women in particular, do not form a homogeneous group. This is quite obvious when one starts from the knowledge that the Caribbean region consists of multicultural and multi-ethnic societies.¹⁸⁷

It is acknowledged that the first wave of feminism emerged in the Caribbean region in the wake of the political struggle for self-determination and independence in the 1940s to the 1960s. Although Caribbean women by then did not see themselves as feminists, they set out from the basis of the liberal feminism approach in combination with feelings of nationalism and for the creation of a Caribbean identity. In this process they tried to improve their living conditions and challenge the patriarchal (male-dominated) power structures that kept them in a subordinated state. The ideas of the second wave of feminism for the struggle of women presented themselves and were legitimised with the International Year of Women and the proclamation of the Decade of Women by the United Nations. The possibilities that these events generated for women in the Caribbean to grow and exchange knowledge led to the strengthening and the development of the women's movement in the region.¹⁸⁸

Several authors remarked however that, despite the awareness shown and progress gained by the Caribbean governments and civil society and the women's movement in regard to gender (in)equality and the tackling of the oppression of women, women still confronted serious limitations in their development, particularly after the 1980s. Significant barriers for the further advancement of women in the Caribbean region were related to the double standards of behaviour in gender relations, sexual division in the labour market, the negative effects of the IMF's SAP, political instability and conservatism, globalisation, religious fundamentalism, increasing poverty and high unemployment and, last but not least, the backlash as a result of the perception of male marginalisation.¹⁸⁹ The double standards of behaviour are, *inter alia*, one of the main differentiation aspects which black feminists pointed to in their consideration of the inequality that exists among the genders.

In sum, the preliminary reason for the differentiation within an emancipation process is to be found in the contextual circumstances under which women live; this is evidently the case for the women who inhabit the different parts of the Kingdom.¹⁹⁰ The side effects of the main objectives of the second wave of feminism, like the strain on women, feelings of guilt and disillusionment, were experienced by both Western and Caribbean women alike. These effects resulted worldwide in the rise of a conservative mainstream wherein more emphasis came to be laid upon motherhood, family and companionship.¹⁹¹

186 Antrobus 2004, pp. 36-39.

187 Cuales 1990; Cuales 1994, pp. 439-442.

188 Antrobus 2004, pp. 40-48.

189 See e.g. Cuales 1994; Cuales 2002; Antrobus 2004; Bailey 2004; Collins 2009, pp. 261-268.

190 For an assessment of the influence of the women's movement in the Netherlands, see e.g. Roggeband 2002.

191 Brinkgreve 1988, pp. 9-12.

§ 3.9 Cultural relativism, universality and feminism

The discussion surrounding cultural diversity and the universalistic claims affected the realisation of women's rights as well. The comprehension of feminist theories and the proper implementation of women's rights in domestic legal systems are affected by it. In spite of the different approaches in feminism, and their consideration of human rights as products of patriarchal societies, feminism does not reject human rights.

Feminism is critical of human rights as it considers that they are not universal because they were designed for (white) men and, by their nature, they exclude women. It favours a really universalistic approach on human rights and the full inclusion of women in the human rights system. Feminism, particularly as practised by Western feminists, has been a vigorous opponent of the cultural claims as it considers that culture is often used for the prevalence of male dominance and female oppression.¹⁹² As the objective of feminism is the realisation of the emancipation of women, it invokes the reinterpretation of norms and principles that have a universal claim and the development of new gender-sensitive norms. Otherwise, according to feminism, extreme forces within societies which propagate cultural diversity to justify the subordination of women will keep obstructing the further emancipation of women.¹⁹³

Cultural relativism in its turn accuses feminism of having an essentialist approach to women and of finding its ground in the Western and imperialistic interpretation of equality.¹⁹⁴ Considering the criticisms and concerns of feminism, particularly anti-essentialist (postcolonial) feminism, and of cultural relativism of the mainstream liberal human rights discourse favouring the inclusion of all human beings from the ideal of universality, the reconciliation of these two theories, beginning from the human needs approach, respect for differences and the indivisibility of human rights, is suggested. Thus, this implies the inclusion of a gender and cultural diversity perspective in the (women's) human rights discourse.¹⁹⁵

The fact is that many of the reservations made by State-parties about the Women's Convention undermine and threaten the universal claim of women's rights, as the realisation of these rights and their protection are considered as belonging to a specific cultural context. The justification for these reservations finds their ground in religious- and cultural-based beliefs and practices within States, which violate and oppress the rights of women. In this context Mullally noted that;

Over the last decade, the rise of identity politics, coupled with the discourse of postcoloniality and anti-imperialism, has given added strength to the claims of reserving states. Assertions of religious-cultural difference appear as acts of resistance against the imperialising impulse of universalistic claims.¹⁹⁶

The use of the women's rights discourse for the legitimisation of neo-imperialistic actions by powerful States against certain (undesirable) cultural (religious) expressions has also

192 Brems 1997, pp. 137-153; Reitman 1997, pp. 104-106.

193 Mullally 2006, p. 25; Goonesekere 2010, pp. 44-48; Nayak 2013, pp. 84-85.

194 Reitman 1997, pp. 106-107.

195 Ibid., pp. 108-110; Brems 1997, pp. 163-164; Mullally 2006, pp. 107-110; Addo 2010, p. 636; Nayak 2013, pp. 86-87.

196 Ibid., pp. 101-103; Mullally 2006, p. 90.

been noted.¹⁹⁷ Cultural limitations and constraints impede the realisation of equality among the genders. Illustrative are the cases in the South Asian region, on which Coomaraswamy concludes that there are many cultural, legal and social problems and impediments for the effective implementation of women's rights.¹⁹⁸ However, through its General recommendations¹⁹⁹ the Committee has implicitly rejected the religious-cultural approach that provides justification for the preservation of oppressive practices towards women. The Committee upholds a rather universalistic approach²⁰⁰ on the realisation of women's rights, challenging the relationship between cultural practices that harm and discriminate against women and States' human rights obligations. Despite this universalistic approach the Committee tries to reconcile certain human rights standards, such as (social) justice and equality, with cultural practices.²⁰¹

Nonetheless, State-governments still have a tendency to provide persisting inequality, oppression of and violence against women²⁰² with a cultural justification. They refuse to redress the violations by private or public actors, because they are considered to be cultural expressions. Dauer confirms this thesis by describing situations of violence against women in the public sphere in the United States²⁰³ and those committed in the private sphere in Pakistan.²⁰⁴

§ 3.10 The process towards the adoption of the Women's Convention

The process which culminated in the adoption of a gender-based convention has a longer history²⁰⁵ than most people would think. It entails, inter alia, the efforts of the International Council of Women for the incorporation of women's rights in the Covenant for the League of Nations, the establishment of a Committee of Experts in 1937 which conducted an inquiry into women's rights which put these rights on the international level and finally the incorporation of the principles²⁰⁶ of the International Woman Suffrage Alliance of 1904 in the Women's Convention.²⁰⁷

The link between women's rights and human rights was first established in the Charter of the United Nations of 1945. The promotion of the rights of women in every aspect of their

197 Reilly 2011, p. 65.

198 Coomaraswamy 1994, p. 39-57.

199 See e.g. CEDAW GR 4 (1987) and CEDAW GR 24 (1999), paras. 12b and 18.

200 This universalistic approach is also visible in the Vienna Declaration of 1993, the Declaration on the Elimination of Violence against Women of 1993, the Beijing Platform for Action and in the Concluding observation on the periodic reports of the Member States.

201 Mullally 2006, pp. 99, 106; Addo 2010, pp. 628-636.

202 Merry points out that the conceptualisation of the phenomenon of violence against women as a human rights violation inevitably symbolises changes in local cultural customs and legal measures regarding sexuality, marriage, and the family. This calls ultimately for reforms of cultural practices. Notwithstanding the fact that human rights systems such as the Women's Convention are law-like, they lack effective and binding enforcement mechanisms. Consequently, registered (severe) human rights violations could not be addressed and punished effectively. Merry 2002, pp. 83-97.

203 Gainsborough 2008, pp. 271-304.

204 It concerns the sexual abuse suffered by female inmates in the United States and the 'honour killings' committed in the private sphere in Pakistan. Dauer 2002, pp. 69-80.

205 For a short contribution on the development of women's human rights on an international level and in the UN system, see Qureshi 2012, pp. 111-124.

206 For an extensive elaboration on the principles see Fraser 2002, pp. 36-43.

207 Chinkin & Freeman 2012, pp. 2-4.

human enterprise became the main purpose of the Commission on the Status of Women, established in 1946 through the efforts of States like Brazil and the Dominican Republic. The efforts of this Commission resulted in the adoption by the General Assembly of several conventions²⁰⁸ on the rights of women. The cooperation between the Commission on the Status of Women and UNESCO delivered a convention on equal education by the United Nations in 1960 as well.²⁰⁹ Finally, the UN Women's Convention came about in 1979.²¹⁰

The first steps towards the concept of a convention on women's rights were already being taken in 1963. In fact, the actions led to the adoption of a Declaration on women's rights (DEDAW) in 1967.²¹¹ It was with the support of the international women's rights movement that the Commission was able to transform the declaration into a convention. It is generally recognised that the International Year of Women 1975 proclaimed by the United Nations, and the First World Women's Conference held in Mexico City also in 1975, were pivotal in this process.²¹² The Declaration of Mexico of 1975²¹³ became the first document in which, *inter alia*, equality between the sexes, equal opportunity for women for the development of their potential, family matters and women's right to participate in the labour market and receive equal payment were universally proclaimed. In cooperation with several NGOs and the women's rights movement, the Commission on the Status of Women worked on the awareness of women's rights around the world afterwards during the Decade for Women 1976-1985.

Apart from the review and evaluation of the progress made on the implementation of the goals in the fields of education, employment and health, the Convention²¹⁴ was also presented during the Second World Women's Conference of 1980,²¹⁵ held in Copenhagen, Denmark. The then formulated Programme for Action for the second half of the Decade included guidelines for (inter)national programmes to support women in the attainment of equality in every aspect of their lives.

A milestone was accomplished in the protection of the fundamental rights of women with the adoption of the Women's Convention. But the resistance among States to take action ensuring the most fundamental rights of women was immense and related to the persistent male-dominated traditions and customs, visible in the many reservations²¹⁶ made to this convention in comparison with the other UN human rights conventions.²¹⁷ Although the

208 The United Nations adopted in 1952 the Convention on the Political Rights of Women (GA A/RES/640 (VII)), in 1957 the Convention on the Nationality of Married Women (GA A/RES/1040 (XI)) and in 1962 the Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriage (GA A/RES/1763 (XVII)).

209 Fraser 2002, pp. 43-45; see also Chinkin & Freeman 2012, pp. 4-5.

210 GA A/RES/34/180.

211 The Declaration on the elimination of discrimination of women (GA A/RES/2263 (XXII)).

212 All this became a possibility after the General Assembly of the United Nations adopted the recommendation of the Commission on the Status of Women in 1972 on the occasion of its 25th anniversary. Chinkin & Freeman 2012, p. 6.

213 'The Declaration of Mexico on the equality of women and their contribution to development and peace' adopted at the World Conference of the International Women's Year Mexico City, Mexico 19 June-2 July 1975, E/Conf. 66/34, available on www.un-documents.net/mex-dec.htm, and www.unwomen.org; DPI/DESI NOTE IWD/31, January 1984.

214 The Convention came into force in 1981; see also Lauren 2003, pp. 85-90, 285-260; Fraser 2002, pp. 45-52.

215 A/Conf. 94/35, available on www.unwomen.org; see e.g. DPI/DESI NOTE IWD/31, January 1984.

216 The supervisory Committee has made several attempts to address this issue, with not much success. See CEDAW 4 (1987) and CEDAW GR 20 (1998); Merry 2002, pp. 83-92; De Boer 2003, pp. 7-8; Haas 2008, p. 219.

217 Dauer 2002; Freeman 2002, pp. 127-130.

Women's Convention had a weak and ineffective enforcement mechanism compared with those in the other UN-human rights conventions²¹⁸ its adoption was a tremendous achievement.

§ 3.10.1 *The ensuing contribution of the women's movement*

The women's movement spread throughout the world, regardless of the underlying differences and diversity within the movement and the lack of attention at that time for women's rights issues in general and the Women's Convention in particular.²¹⁹

The Third World Women's Conference of 1985 held in Nairobi, Kenya, delivered the Looking Forward Strategies²²⁰ which contained main areas of strategies and measures of implementation for the advancement of women for the period up to 2000. Women's rights finally obtained the movement's desired international attention through the controversial issue of violence against women, particularly in 1993 after the Second World Convention on Human Rights in Vienna, where several recommendations were made by the UN General Assembly to strengthen the protection of women's human rights.²²¹

In the Vienna Declaration and Programme of Action equal rights of women and the recognition of women's rights as human rights became a fact. Furthermore, a call was made for the integration of women's rights in 'the mainstream of United Nations system-wide activities.'²²² This upheld the introduction of gender-mainstreaming into the United Nations system and national (legal) systems. In that same year the Declaration on the Elimination of Violence against Women²²³ was adopted by the United Nations²²⁴ as an additional non-binding instrument addressing one of the main issues that reinforces the oppression of women, as called for in the Declaration of Vienna of 1993.²²⁵

Another remarkable recommendation regarded the adoption of an Optional Protocol to the Women's Convention, whereby women were handed the possibility to deliver their complaints to the supervisory Committee.²²⁶ This Protocol strengthens the state-report mechanism with the compliance and inquiry procedures.²²⁷

218 Willems 1996, pp. 13-16.

219 Fraser 2002, pp. 55-56.

220 This document was adopted at the third World Women's Conference to Review and Appraise the achievement of the United Nations Decade for women: Equality, Development and Peace, in Nairobi. The General Assembly of the United Nations agreed upon its implementation in resolution GA A/RES/40/108.

221 A/Conf. 157/23; see also Brems 1997, pp. 150-151; Reilly 2011, pp. 61-63.

222 A/Conf. 157/23, para. 37.

223 The American region was up until 2011 the only region with such a convention. It had the Convention on the Prevention, Punishment and Eradication of Violence against Women (the Convention of Bélem do Pará) of 1994. Since 2011 the European region has also adopted such a convention, namely the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) (ECT No. 210, 2011).

224 GA A/RES/48/104.

225 A/Conf. 157/23, para. 38.

226 The other recommendations were: (1) strengthening enforcement of CEDAW by universal ratification and withdrawal of reservations; (2) the appointment of a Special Rapporteur on Violence against Women at the UN Human Rights Commission; (3) the approval of a UN Declaration on the Elimination of Violence against women; and (4) recognition of war crimes against women in an international court. As a result, the United Nations adopted the recommended declaration in 1994 and appointed a Special Rapporteur and the first rapporteur was Radhika Coomaraswamy in 1995. A/Conf. 157/23, paras. 36-44; for an elaboration on the efforts of the Special Rapporteur in the case of Afghanistan, see Gaer 2002, p. 98-122.

227 The Protocol of 1999 came into force in 2000. GA A/RES/54/4, available on: www.un.org/womenwatch/daw/cedaw/protocol/text.htm; see also Bijnsdorp 2000, pp. 329-337; Evenhuis & Van Eijk 2001, pp. 16-17;

§ 3.10.2 *Beijing Declaration and the Platform for Action and women's rights*

During the Fourth World Conference on Women held in Beijing, China, in 1995, women's rights received a permanently strong position on the world agenda. The Beijing Declaration and the Platform for Action²²⁸ delivered a firm determination and commitment from the States to further the accomplishment of the advancement of women and girls and the realisation of their most fundamental rights on the basis of equality with men.

Through its women's organisations and regional governmental agencies, such as the UN Economic Commission of Latin America and the Caribbean (UN ECLAC), the Caribbean region also participated at the different women's conferences and the contribution of the region during the Fourth World Conference on Women was significant. It had an overall positive experience in the preparation and participation process and its strong positioning on women's unpaid work and the need to take this on at country level was acknowledged internationally.²²⁹

The Beijing Platform for Action supplemented and reinforced the international human rights instruments. Twelve critical areas of concern were explicitly identified for the accomplishment of the advancement of women.²³⁰ Specific areas were, inter alia, the increasing burden of poverty, the unequal and inadequate access to education, violence against women, the insufficient mechanisms at all levels to promote the advancement of women and the lack of respect for and the inadequate promotion and protection of women's human rights. For the attainment of the real advancement of women, the United Nations system was urged to promote a policy of gender-mainstreaming in all its policies and programmes and also at regional and domestic levels. This was considered necessary as despite all the positive and progressive developments strengthening the position of women, IMF's SAPs, globalisation and the further liberalisation of the free-market economy had a considerable negative impact on the further emancipation and advancement of women. The negative impacts entailed the severe impoverishment of women²³¹ and the violation of women's rights in certain regions of the world, including the Caribbean region.

§ 3.10.3 *Evaluation of the Beijing Platform for Action*

The implementation of the Beijing Platform for Action has periodically undergone evaluation. The progress achieved and the obstacles for the fulfilment of the critical areas at country level were measured. In regard to the obstacles for the effectiveness of its implementation, it is pointed out that this was related to inter alia the lack of governmental commitment, its lack of binding force and concrete objectives.²³² Subsequently, new guidance and directions²³³ have been put forward after each evaluation.²³⁴ In 2000 the UN General Assembly enumerated

Van Leeuwen 2004; Cusack & Cook 2009, pp. 211-221.

228 A/Conf.177/20/Rev. 1.

229 Bailey 2004, pp. 626-632; for the contribution of the former Netherlands Antilles in this process, see Chapter 4.

230 A/Conf.177/20/Rev.1, para. 44

231 Sadavisam 1997, pp. 630-665; Fraser 2002, pp. 57-58.

232 Qurenschi 2012, p. 114.

233 See e.g. GA A/RES/S-23/3, paras. 34-65.

234 For an overview of the documents, see www.unwomen.org, last visited on 19 April 2015.

and acknowledged in its first Five-Year Review and Appraisal Outcome document²³⁵ the new challenges, such as rapid globalisation and economic disparities, which affected the effective implementation of the Platform for Action. Specific instructions on the actions were to be made at national and international level, while, inter alia, the incorporation of a gender perspective in development programming, the strengthening of institutional capacity and support to NGOs were suggested.

In 2005 the Commission on the Status of Women again performed the same evaluation and its findings were presented in the Ten-Year Review and Appraisal and the Outcome documents.²³⁶ The last review of the progress on the advancement of women through the implementation of the objectives formulated in the Beijing Plan for Action took place in 2010.²³⁷

§ 3.10.4 *The latest instruments supporting women's rights*

Within the United Nations the necessity grew for the strengthening and incorporation of the protection of women rights in its protection system. The process of the incorporation of a gender perspective in the human rights system of the United Nations was formally initiated in 1995 by the Secretary General.²³⁸ This led the Office of the High Commissioner of Human Rights together with the human rights treaty bodies²³⁹ to integrate a gender perspective and also the issue of the violation of women's rights into their work. In 2000 the United Nations delineated through its UN Millennium Declaration²⁴⁰ the priorities of the twenty-first century. The promotion of gender equality and the empowerment of women, the third area of the Millennium Development Goals,²⁴¹ was considered a key instrument to combat the neglect and underdevelopment which women and girls were experiencing.

Subsequently, the Committee of the Women's Convention has been incorporating States' obligation to fulfil this goal in its Concluding observations after the review of the periodic national reports.²⁴² The Human Rights Council in its turn mandated in 2007 upon States the inclusion of information on the realisation of women's rights and a gender perspective in their periodic review, together with the call for human rights bodies to integrate the human rights of women and a gender-perspective into their work, in their concluding observations, general comments and recommendations.²⁴³

The Human Rights Council instituted a special procedure on the issue of discrimination against women by 2010 as a consequence of the persistent discrimination and exclusion which women encountered in many societies.²⁴⁴ The adoption of the resolution by the

235 GA A/RES/S-23/3 (Further actions and initiatives to implement the Beijing Declaration and Platform for Action).

236 See e.g. E/CN.6/2005/2; E/CN.6/2005/3.

237 See e.g. E/2010/27 - E/CN.6/2010/11; E/CN.6/2010/2.

238 UN Doc. A/HRC/4/104.

239 Consider e.g. the CCPR General Comment no. 28 (2000); the CESCR General Comment no. 16 (2005); CERD General Recommendation no. 25 (2000).

240 GA A/RES/55/2.

241 The Millennium Development Goals entailed a total of 8 areas of development. Visit www.unwomen.org.

242 See e.g. CEDAW/C/NLD/CO/4, para. 42.

243 UN Doc. A/HRC/RES/6/30, paras. 9, 16-17.

244 A working group consisting of five experts was installed for a period of three years. UN Doc. A/HRC/RES/15/23 (2010).

General Assembly in 2010 also had the objective of 'the strengthening of the institutional arrangements on gender equality and the empowerment of women'.²⁴⁵ Subsequently, four separate UN agencies²⁴⁶ in charge of the promotion of the advancement of women were merged into one entity, 'the United Nations Entity for Gender Equality and the Empowerment of Women', known as UN Women. It started its operation in 2011 and it has several focus areas, under which comes the protection of the human rights of women.²⁴⁷

§ 3.11 The Women's Convention in the Kingdom²⁴⁸

The Women's Convention was signed by the Kingdom in 1980, without any reservation. It came into force in 1991, after the official approval of the States General.²⁴⁹ The main reason for this ten-year delay lay in the adaptation and introduction of domestic measures and policies²⁵⁰ in the Netherlands in conformity with, inter alia, the anti-discrimination provisions of the convention. This exercise proved to be more challenging than the Dutch legislature had expected; the implications went further and they were not anticipated.²⁵¹

In the Act for the Ratification²⁵² of the convention was incorporated the obligation²⁵³ of the Government of the Netherlands to report periodically to the Parliament on the status of women in the Netherlands, two years prior to the submission of the periodic report²⁵⁴ to the supervisory Committee. This obligation was a unique measure as the participation of the Parliament of the Netherlands in the reporting obligation was guaranteed hereby.²⁵⁵ The former Netherlands Antilles in its turn ratified this Convention without any restraints, despite its initial intentions.²⁵⁶ Although the Convention does not have a territorial application clause,²⁵⁷ the entire Kingdom has, with its ratification, an obligation to implement the obligations set out in the Convention and to report periodically to the supervisory

245 GA A/RES/64/289, para. 49.

246 The four agencies were: the Office of the Special Advisor on Gender Issues and the Advancement of Women (OSAGI), the Division on the Advancement of Women (DAW), UN Development Fund for Women (UNIFEM), and the International Research and Training Institute for the Advancement of Women (INSTRAW).

247 For more information on the areas and the activities of UN Women, visit www.unwomen.org; see also Qurenschi 2012, pp. 117-118.

248 The Women's Convention is, after the Convention on the Rights of the Child (ICRC), the most universal treaty. The States that are not party to this convention are Somalia and Sudan. Palau (signed in 2011) and United States (signed in 1980) have signed the convention, but they have not ratified it as yet. See the list on www.ohchr.org.

249 Trb. 1981, no. 61 and Trb. 1991, no. 134.

250 It concerns the adoption of the General Equal Treatment Act of 1994 (Stb. 1994, no. 230)

251 Holtmaat 2004, pp. 137-138 (Appendix).

252 The Kingdom's Act Approval of the Women's Convention of 3 July 1991 (Stb. 1991, no. 355).

253 Article 3 Kingdom's Act Approval of the Women's Convention.

254 The question here is whether this obligation applies for the other countries within the Kingdom of the Netherlands, such as Curaçao. This issue is addressed in Chapter 11.

255 Willem 1996, p. 8; Evenhuis & Van Eijk 2001, p. 47.

256 The Women's Convention was signed by Cabinet Martina in 1981 without the initially intended reservations of Cabinet Evertsz (1976). The reservations were related to the expected financial consequences that equal treatment of men and women would have had on the public finances of the former Netherlands Antilles. And as expected the financial consequences were indeed enormous. See Evaluation report Decade of Women (1975-1985) of 8-10 March 1985. Information obtained from Mrs M Liberia-Peters on 3 December 2013.

257 Kroworsch 2012, pp. 547-556.

Committee, based on Article 29 Vienna Convention.²⁵⁸ This State-party has submitted six reports thus far. The Optional Protocol on the Women's Convention was also ratified by the Kingdom in 2002.²⁵⁹

§ 3.12 Conclusion

For the comprehension of the importance of the realisation of women's rights for the further development and emancipation of women in society, an analysis of the conceptualisation of human rights and their recording in conventions is essential. My consideration of the selected sources demonstrates that the development of fundamental rights and freedoms of individuals portrays an extensive and interesting trajectory.

There are many controversies about the origin of human rights. Although it is acknowledged that the conceptualisation of human rights is inextricably linked with the liberal emancipation processes registered in the Western world in particularly the seventeenth and eighteenth centuries, the contributions of Greek and Roman political philosophies and Middle Ages Christianity are recognised.

The liberal ideas on the social contract theory and on individual rights advanced by thinkers like Hobbes, Locke and Rousseau and others, formed the basis for the concept of human rights, the legitimacy of the power of the State and rule of law. During the era of constitutionalism, the codifications of individual rights in Western countries based on the core values of freedom, equality and solidarity took place. However, the liberal ideas on these rights and freedoms were confined to certain social ranks, classes, gender, ethnicity and nationalities, resulting in the underdevelopment of the universal claim of human rights. The social movement and the socialist human rights discourse of the nineteenth century gave a critical meaning and impulse to the liberal approach. Scholars like Marx and Engels pronounced fundamental criticism on the existing class exploitation, liberal principles and the devastating consequences of industrialisation on the development of people.

The recording of international human rights as the natural rights of individuals became a reality after World War II. Through the Atlantic Charter of 1941 the foundation was put in place for the establishment of the United Nations in 1945; this became the international organisation in charge of, inter alia, the promotion and protection of human rights worldwide. The creation of organs like the UN Commission of Human Rights in 1946 carried this task further and with the adoption of the 'International Human Rights Bill', a firm foundation for international human rights law was created. The universality claim vested in these rights received a proper foundation. This claim was however heavily criticised and rejected by the cultural relativist approach of Southern States as, in their opinion, these liberal human rights excluded the realities of non-Western societies and proclaimed a neo-imperialistic supremacy of Western countries. Many of these States gained their independence based on the effectuation of the right of self-determination set out in the International Human Rights Bill.

The distinction in categories of human rights, underlined by the rivalry between East and West, and later on by the relations between the North and the South, and expressed in the two main international human rights conventions, has determined the manner in

²⁵⁸ Article 20 in conjunction with Art. 25 Women's Convention.

²⁵⁹ Trb. 2000, no. 99 (Ratification, Trb. 2001, no. 146 and Trb. 2002, no. 6).

which State obligations and the availability of resources for the fulfilment of fundamental rights and their enforceability were realised and allocated. The UN Women's Convention of 1979, a specific convention that ensures the rights of women, has incorporated the first and second categories of human rights from a gender perspective. However, since the Vienna Declaration of 1993 this distinction has faded as the interconnectedness and indivisibility of human rights has been permanently recognised. Thus, I set out, when contemplating human rights law, from the obligations of States to respect, protect and fulfil the fundamental rights of their inhabitants, and their willingness to realise these obligations.

Overall, the UN human rights conventions strengthen and complement the domestic protection systems. Conventions begin with the premise of the fight against assaults on human dignity and against discrimination. As well as the international human rights regime there are several regional regimes of which the European Convention of Human Rights has the most effective implementation mechanism. Despite the hard-won progress in the field of human rights the international community, including liberal Western democracies, and the human rights protection systems are confronting many challenges related to the war against terrorism after the 11 September 2001 attacks in the United States, as severe violations of human rights were registered due to the effectuation of anti-terrorism measures.

In the case of women, their struggle against oppression and discrimination has a long history. The long pursuit of political and civil rights and against marital subordination and for participation in the labour and educational sectors confirms this. Despite the educational advancement of women due to the efforts of the first wave of feminism at the end of the nineteenth century, patriarchal (family) structures and political and social structures impeded women's further development for many decades. Thus, the second wave of feminism of the 1960s had the objective of accomplishing economic independence of women through their participation in the public sector, which hitherto had resulted in many constraints for women.

Within the movement itself, with the exception of the liberal mainstream which propagated equality for women from a liberal approach without challenging the societal (patriarchal) power structures, socialist (cultural) feminism rejected the unequal treatment of women by challenging the dichotomy between the private and the public and the patriarchal (family) structures among other things. The radical mainstream defended the creation of more feminine-centred societal structures by the alteration of societal male-dominated perceptions.

Liberal feminism as the most prominent mainstream maintained an essentialist approach on (the emancipation of) women, so it did not cover the many challenges and hardships which women endured, particularly black (non-white) women. The emergence of black (postcolonial) feminism in the United States gave voice to the awareness-raising of black women and this mainstream was very critical of the universal claim of the other mainstreams, particularly that of the liberal mainstream. Black women favour a different approach as they consider that women form a heterogeneous group and that many women are subordinated and oppressed not just by their gender, but also by their race and class. The inter-relatedness of the factors of oppression and discrimination were accounted for and this has been underlined by black (postcolonial) feminism as well.

However, the emancipation of women within male-dominated structures (un)consciously led to the overloading of women and the development of overall feelings of guilt

and disillusionment, resulting in the development of a more conservative approach on the further emancipation of women in many societies. These internal limitations, examined by the psychoanalytic approach of feminism, are correlated with the persistent public/private dichotomy, which implies an unequal division of duties and responsibilities between men and women in and outside the private domain.

For the realisation of women's (human) rights laid down in the Women's Convention, feminism favours a universal approach. One point of criticism on this approach is that mainstream feminism does not take the context in which many (black and poor) women are living into proper consideration. Therefore, black (postcolonial) feminism argues for a contextual approach. Thus, feminism, particularly black (postcolonial) feminism, invokes the transformation of norms and principles departing from real universality and the creation of new gender-sensitive norms. In doing so, it is leaning towards reconciliation with cultural relativism. Yet, although the treaty-based Committee starts from a universalistic approach with some consideration for the specific cultural practices within societies, many States use cultural (religious) claims to avoid compliance with the obligations set out in the Women's Convention through reservations.

By the contemplation of the process which led to the adoption of the Women's Convention in 1979 and the recognition of women's human rights afterwards, it became clear to me that by these means explicit attention was finally given to women's rights and women's issues worldwide. The recognition of women's rights as human rights during the Vienna World Conference of 1993 confirms this. The process enmeshed the official status of women's rights and women's issues into the international human rights law spectrum. The initially weak and ineffective protection mechanism of the convention, which was further undermined by the many reservations made to it by States, was partially alleviated with the enactment of the Optional Protocol in 1999.

Prior to this, the Fourth World Women's Conference of 1995 held in Beijing permanently secured the position of women. The outcome of this conference, and those of its predecessors, was to provide guidelines and instructions to UN Agencies and States for the advancement of women and the realisation of their rights. With the formulation of the twelve critical areas of concern and a well-elaborated Plan for Action, a framework was given to States, wherein, inter alia, the obligation to mainstream gender in all actions and programmes of governmental agencies was incorporated. The progress attained by States in the effectuation of this Plan for Action has been reviewed periodically by the United Nations. With the institution of additional international (legal) instruments and guidelines, hopefully the persisting discrimination and the lack of development in the status of women can be effectively alleviated.

In conclusion, the significance of all these international events, including the emergence and the impact of the women's movement, and the enforcement of the gender-based convention in Curaçao as part of the Kingdom, which became party to this convention in 1991, is extremely important for the establishment of the status of the emancipation of local women and their further advancement.

Chapter 4

THE WOMEN'S MOVEMENT AND EARLY ACTIONS OF EXECUTIVES AND NGOS AT LOCAL LEVEL

§ 4.1 Introduction

International developments on the recognition and realisation of women's rights were reflected in Curaçao. After the proclamation of Women's International Year in 1972 by the United Nations, local women engaged intensively in the struggle for the eradication of discrimination and oppression of women and for their advancement. Local women became aware of their disadvantaged position in society, particularly after pursuing further education.

The emergence of women's organisations stimulated this development and the growth in awareness. As a result the federal and local Executives¹ were forced to recognise and introduce measures improving the status of women. At a certain point national machinery on women's development was created. Consecutive Executives and NGOs participated at regional and international conferences and forums on women's and gender issues. This participation led to the enactment of instruments and programmes benefiting women.

The question is, though, to what extent have these developments effectively contributed to the real advancement of Curaçaoan women. In this chapter I give an overview of (parts of) the rise and influences of the women's movement, i.e. feminism, on the empowering of local women.² The implications of international events on the initial steps towards the creation of the national machinery – a gender-oriented policy – are examined as well.

Consequently, in § 4.2 I explore shortly the developments around the women's movement locally. § 4.3 elaborates on the establishment and the objectives of the main women's organisations, such as Steering Committee Curaçao and the Women's Development Centre (SEDA). § 4.4 contains a description of the participation of national and local government and NGO representatives at (sub)regional and international conferences and forums. Most remarkable was the participation of the Netherlands Antilles at the ECLAC Regional Women's Conferences and the Beijing Women's Conference in 1995. This chapter provides in § 4.5 and § 4.6 recollections of actions taken by the Executives and NGOs after the subsequent world events on women's development and women's rights. It concludes with my observations on the findings on the issues addressed.

1 In this context I refer to the federal (Antillean) Executive and the local (Curaçaoan) Executive Board.

2 Due to lack of documentation, the (un)conscious disappearance and destruction of valuable information about the contemporaneous history of local women and the women's movement, this chapter does not contain all parts of the (socio-economic and historical) development of women and the governmental policies on women and gender issues.

§ 4.2 The women's movement (and feminism) in Curaçao

As stated by Cuales in her article entitled 'In search of our memory. Gender in the Netherlands Antilles,' not much has been done in an academic sense to retrieve and record the development and history of the women's movement in the former Netherlands Antilles.³ Even today, more than fifteen years after the publication of this article and after the dissolution of the Netherlands Antilles the situation remains the same. Many reasons can be mentioned for this omission. It is regrettable that not many analytical investigations have been performed on the women's movement in these island-territories. This acknowledgement has made me realise the importance of the continuation of this thesis. It also means that my work in this field represents a challenge.

As a lawyer I do not have the necessary skills to perform a profound investigation into the matter. This would be a futile endeavour, which could result in total failure. Furthermore, the lack of available and reliable (academic) sources and cooperation of people involved in this area might have a negative reflection on the completeness of this research. In my opinion, the challenge for thorough investigations on local women's development ought to be undertaken by historians, sociologists, anthropologists and other social scientists. Nonetheless, the present chapter is a careful attempt to give a short description of the rise and the development of the local women's movement. The influence and role of the federal and local Executives on the emancipation and awareness-raising among women cannot be excluded either. In this attempt I am obliged to mention and acknowledge several local historians, sociologists and anthropologists and activists who made in one way or the other a contribution by carrying out some research on the history of women. Researchers and activists like Cuales,⁴ do Rego-Kuster,⁵ Allen,⁶ Pieters Kwiers⁷ and Henriquez⁸ have published and made their contributions, each in their own manner. The accomplishment of these women and many others are rightly recognised by Henriquez in the book entitled '*Korsou su muhenan pionero*'.⁹ Any investigation on local women without the incorporation or a mention of the work of local researchers, activists and (non)governmental organisations active in the field of gender and women's rights would be incomplete.

It remains very regrettable though that I was unable to incorporate many contributions as valuable sources on the development of local women were (inexplicably) destroyed or have disappeared.

3 Cuales 1998, pp. 86-100.

4 Sonia Cuales was a Curaçaoan anthropologist and sociologist who was very active in the field of women rights at regional and international level. She was a co-founder of CAFRA. She has worked for UNICEF in Colombia and for the ECLAC in Trinidad and Tobago.

5 Gladys do Rego-Kuster is the co-founder of the first feminist-based Antillean women's organisation (UMA) in 1975. She was active as coordinator and afterwards as the president of this organisation. She is recognised by many as one of the most dynamic local activists, especially in the late 1970s and 1980s.

6 Rose-Mary Allen, as one of the local researchers, has many publications on socio-cultural topics, including women.

7 Stella Pieters Kwiers was a senior international researcher employed at the United Nations for many years. She has provided valuable contributions to the development of neighbourhood centres, women and socio-cultural issues of Curaçao.

8 The historian and activist Jean Henriquez has been active on issues concerning the rights and development of women for many years. She was for several years the president of CAFRA in Curaçao. She has occupied the position of director of SEDA in the 1990s and she is currently active as the president of '*Fundashon Dedima*'.

9 This means: Curaçao's pioneer women [translation by A.R.]. See Henriquez (red.) 2002.

§ 4.2.1 *The first wave of the women's movement*

In an attempt to construct gender relations and women's issues in the former Netherlands Antilles, Cuales mentions the factors that have influenced these relationships, which were the different classes and racial groupings that have formed this extremely complex society, the slavery past (history) of the territories, the demographic and legal structures of the islands, the perception of sexuality, family structures and the social relations of work.¹⁰ These factors and several others have already been extensively described in Chapter 2. This implies though that the influence and meaning of the women's movement, at a local level differs from its meaning in Western societies, like the Netherlands.

Actually, the impact of the first wave of the women's movement and the fight for emancipation of women was (unconsciously) interconnected with the emergence and the urge for self-determination in the colony of Curaçao, which expressed itself among women through the establishment of women's wings in political organisations,¹¹ such as the '*Luchadonan pa Derecho di Voto pa hende muhe*', the female wing of the Catholic People's Party, and '*Damanan di Djarason*', the female wing of the People's National Party. Apart from being engaged in the struggle for political rights, they were also active in the field of awareness-raising, in the fight for equality with men and for the liberation of women from the confinement of their homes and subordination. Through the participation in political parties they attempted to address their subjugated position which was maintained by discriminatory laws, gender-stereotypes and fixed parental roles.¹² According to Cuales the main factor that kept the subordination of local women in place in those days was the legal status of women. Their marital status determined the rights and treatment which women obtained from the State-Government, the Church, the Royal Dutch Shell Oil Company and their husbands, i.e. spouses.¹³

Local women organised themselves in various types of organisations in that period. The religiously-based women's organisations, service and charity organisations and female wings of political parties provided much needed social support and opportunities to women. The organisations were an excuse for married and middle aged women to leave the confinement of their homes in search of some recreation, distraction and additional training (education). In accordance with the spirit of that time, there were women's organisations that were founded on by-laws which excluded certain groups of women, such as unmarried women, from their membership.¹⁴

Legal transformations were accomplished through great struggles of some courageous¹⁵ women and the influence of global developments on the status of women, just after the emergence of the second wave of the women's movement.

10 Cuales 1998, pp. 89-90.

11 The first female representative in the Parliament was Mrs A DeLannoy-Willems in 1949 of the National People's party (*Partido Nashonal di Pueblo (PNP)*). In 2014 the 65th anniversary of this event was commemorated. Henriquez (red.) 2002, pp. 159-161; see daily newspaper '*Amigoe*' of 17 March 2014, p. 2.

12 Many participated in elections after the introduction of universal suffrage in 1948 and some became members of the local and federal representative bodies afterwards. Henriquez (red.) 2002; Antrobus 2004, pp. 40-48.

13 Cuales 1998, pp. 94-95; see also § 2.5 and § 2.7.

14 Do Rego-Kuster 1990, pp. 543-544; Buesink-van der Horst 1986; '*Verslag van de enquête, die in Oktober, November 1986 gehouden is onder de besturen van de groepen, die verbonden zijn aan het Sentro di Dama en de Steering Committee*' (no author and date).

15 Some of these women are mentioned in the notes below.

§ 4.2.2 *The second wave of the women's movement*

The uprising of the women's movement in the former Netherlands Antilles, in Curaçao, was the result of the need for the elimination of ill-treatment and oppression. The first moves towards improvement on the (political and legal) position of women dated from 1971. In that year a commission was set up by the federal Executive which identified discriminatory sex-based laws. According to do Rego-Kuster the institution of this commission was a consequence of the events of 30 May 1969.¹⁶ Regardless of the motives behind its establishment, it suggested the amendment of discriminatory laws, together with those on the amelioration of social conditions within the Antillean community; conditions which had strengthened the discrimination against and oppression of women.¹⁷

With the creation of the first Bureau on Social Welfare at federal level in 1974, in anticipation of the celebration of International Women's Year, women's issues were looked at. The Bureau came under the jurisdiction of the Department of Public Health.¹⁸ Women's issues were for the first time put on the governmental agenda. The elimination of the legal incapacity of married women, as recommended by the Commission in 1972, became subsequently a reality in 1975 by the hand of the first female Minister who was the Minister of Public Health and Social Welfare.¹⁹ With the enactment of this law many discriminatory provisions on the status of married women in the Civil Code, the Bankruptcy decree and the Act on civil proceedings, were amended.²⁰

Up until 1974 women's organisations were primarily active for the benefit of their members. The celebration of International Women's Year in 1975 induced the established women's organisations, through the initiative of the women's organisation "Business & Professional Women's club", to organise themselves more intensively. The umbrella organisation Steering Committee Curaçao with its ecumenical foundation, came into being

16 Do Rego-Kuster 1990, p. 544.

17 According to several sources these suggestions were laid down in the report '*Commissie Uitbanning discriminatie van de vrouw*' of 1972. Despite many attempts I was not able to retrieve this report; see Relato annual 1987, Steering Committee: Grouponan di Damas Korsow (M. Leetz & J. da Costa Gomez), (no date), p. 4; De Lannoy-Berg 2000, pp. 96-99.

18 The first and only Head of this Bureau was Mrs B Dougle. She became the first woman appointed by the Executive as Head of a governmental department. See Henriquez (red.) 2002, pp. 213-217.

19 The first female Minister of the Netherlands Antilles was Mrs Lucina da Costa Gomez-Matheeus as the Minister of Public Health in 1970 and afterwards as Minister of Social Welfare. She was the first woman to lead a political party (the National People's Party) into the general elections in 1969. She was the widow of the founder of this political party, Dr M da Costa Gomez, who passed away in 1966. As Minister she was responsible for the installation of the commission. She was also responsible for the establishment of '*Forsa Femenina*' (1973-1977), the female wing of the National People's Party (PNP) whose main objective was the realisation of real participation of women in the political area. She became the first female Prime Minister of the Netherlands Antilles in the outgoing cabinet Evertsz (1973-1977) for a short period of ten days in 1977, after the resignation of the then Prime Minister W Evertsz. She is acknowledged by many as the most active female politician who fought for the equal rights of women in the Netherlands Antilles and Curaçao. For a recollection of her accomplishments, see De Lannoy-Berg 2000; see also De Lannoy-Berg 1976, pp. 8-10; Henriquez 2002, pp. 121-126.

20 Through this National ordinance a total of 50 provisions of the Civil Code were adapted. See P.B. 1975, no. 70.

in 1974²¹ as a result. It came to be in charge of and concerned with the activities related to this celebration. The success of its activities led to its permanent establishment in 1975.²²

National activities in the context of International Women's Year came firstly from private initiatives, followed by those of the federal Executive as requested by the United Nations. The successful performance of Steering Committee Curaçao persuaded the federal Executive to install, at the end of 1974, a National Committee consisting of members of the local Steering Committees.²³ The Curaçaoan Committee supported and guided the work in the field of the development of women of the other local Committees. Many of their activities and those of the National Committee were financed by the federal Executive.²⁴ Of the activities organised in 1975, the first Caribbean Conference on the development of women, which was hosted by the federal Executive, and held in Curaçao, was the most remarkable.²⁵

In sum, the 1970s was a most important time for awareness-raising among local women and their movements, general emancipation and the consciousness-raising among the black segment of the population.²⁶ Women of the higher social classes, on the other hand, were in general unaware of and not involved in the movement. They were not (fully) conscious of the significance of and the need for the advancement of local women, as they did not see themselves as non-emancipated. Groups of lower and middle class women were more engaged in this emancipation process. However, the majority of local women were not really involved, despite the many activities of the women's organisations.

Afterwards, women started to mobilise themselves more effectively. Much socio-cultural work and training were provided to women, particularly after the establishment of the Women's Development Centre (SEDA) in 1980 due to the efforts of members of the Steering Committee Curaçao.²⁷ At a certain point women felt that, in order to change their status, men had to be involved in this process to guarantee the real advancement of women. This acknowledgement was also led by developments around the conceptualisation of gender at an international level. The legal advances accomplished during the late 1970s, 1980s and early 1990s did not transform the unfortunate position of many women into a better one though.²⁸ As a result of the multiple challenges connected to the empowerment of local women, women's organisations were forced to enlarge their target groups by the early 1990s.²⁹

21 Stella Oosterhof-Priest together with Myrtha Leetz-Cijntje, Beatrice Doran-Scoop, Maria Liberia-Peters and Lelia Peternella-Pieters Kwiers established this umbrella organisation in 1974. Its first board members were Mrs S Oosterhof (first president), G Daal-Piper, B Doran-Scoop, M Plantijn, D Lopez, A Ruiz and M Leetz-Cijntje. Soon after the other island-territories of the former Netherlands Antilles also founded their own Steering Committees, often with the collaboration and support of Steering Committee Curaçao. The Steering Committee of Saba was the only committee with both male and female members. Information obtained from Mrs S Oosterhof on 30 August 2012 and Mrs V Daflaar on 16 April 2013.

22 Information obtained from inter alia Mrs S Oosterhof, L Peternella-Pieters Kwiers, J da Costa Gomez.

23 Relato annual 1987, Steering Committee: Grouponan di Damas Korsow (M. Leetz & J. da Costa Gomez), (no date); Buesink-van der Horst 1986, pp. 5-7.

24 Information obtained from Mrs V Daflaar, on 16 April 2013.

25 Peternella-Pieters Kwiers 1985, pp. 4-5.

26 For more details on these changes see § 2.6 and § 2.9.5.

27 Relato annual 1987, Steering Committee: Grouponan di Damas Korsow (M. Leetz & J. da Costa Gomez), (no date); Buesink-van der Horst 1986, p. 7.

28 The socio-economic realities of local women up until the 1990s are well described in Ansano e.a. (ed.) 1992.

29 Pieters-Kwiers 1994 (a), pp. 11-12.

§ 4.3 Women's organisations in Curaçao in the early days

The establishment of women's organisations and the Women's Development Centre (SEDA) gave an enormous stimulus to the awareness among and the development of local women. In this section I highlight the contribution of a selection of women's organisations oriented on the political, cultural and social development of women. Prior to this, the concept of the development of women has to be defined, because I use the concept throughout my elaboration.

The concept of the development of women starts from the point of view that women should have equal rights, opportunities and responsibilities similar to men and furthermore, these equal rights ought to be supported by the State through the enactment and implementation of proper laws and measures. The main objective of the development of women ought to be directed at the accomplishment of self-reliance of women. NGOs, together with all branches of the Government, have the responsibility to guide women through this process. Local NGOs have a crucial role in the creation of an adequate gender-sensitive national policy, which starts from a development-oriented approach.³⁰

§ 4.3.1 *The Steering Committee of Curaçao*

The first religiously-based umbrella organisation which engaged in, inter alia, the further development of Christian women was the Caribbean Church Women.³¹ The Caribbean Church Women existed between 1972 and 1979 as a sub-section of the Caribbean Council of Churches. It operated as the representative of women in the Church and it coordinated the support and education of women. Steering Committee Curaçao had a strong connection with this organisation as many of its member-organisations and board members were affiliated with the Caribbean Church Women.

Steering Committee Curaçao itself endured for many years a negative image, especially among the males of the population, as it was seen as a threat to the existing relational power-structures. Its objectives were (1) to stimulate and obtain co-operation and unity among women and women's groups, (2) to stimulate women to further their development in Curaçaoan society, (3) to improve the position of women, and (4) to improve the developmental level of society in general in accordance with Article 2 of its by-laws.³² It initiated and organised many conferences, seminars, programmes and projects in the fields of home and family, production cooperatives among women, drugs prevention schemes for young people, and education, among other things. Most of its activities were (co-)financed

30 See Pieter-Kwiers 1994 (c); Pieters-Kwiers 1994 (b).

31 It started after the struggle of women for an official voice and place in the Church. After the closure of the Bureau of the Caribbean Church Women in the Southern Caribbean region in 1979, as a result of a conflict with the Caribbean Council of Churches for more autonomy for the community work it was performing, many of its members became active as members of Steering Committee Curaçao. The Caribbean Church Women just wanted to provide support and education to religiously-based women's groups, and also to individual Catholic women and other women's groups. The close connection between these two organisations was reflected in the fact that the coordinator of the Caribbean Church Women in the Southern Caribbean region, situated in Curaçao, Mrs J da Costa Gomez, also became a board member of Steering Committee Curaçao. Buesink-van der Horst 1986. Additional information obtained from Mrs J da Costa Gomez, on 16 March 2013.

32 (Adapted) By-laws of Steering Committee Curaçao, 4 October 1979, approved by National decree, 5 February 1980, no. 16.

by the federal Executive, through the Bureau of Social Welfare. One of its most memorable activities was the Caribbean conference on prostitution held in Bonaire in 1978.³³

After its dynamic start the Committee experienced a decline among its members in the following years. The loss of its archive³⁴ prevented me from gaining a more accurate picture of its history, evolution and activities.³⁵ However, there is no doubt that many of its founders and (first) board-members became powerful female (political) leaders in Curaçaoan and Antillean society.³⁶ Several political parties introduced or strengthened their female wings as a result of the success and efforts of the Committee. In this regard I can mention the '*Forsa Femenina*' and afterwards the '*Muhenan Nashonalista*' of the National People's Party,³⁷ and the '*Akshon Demokratiko Femenina (ADEFA)*' of the Democratic Party.³⁸

Despite its initial non-political approach, the point of departure of Steering Committee Curaçao was later transformed into the encouragement of women to pursue political careers and create a common ground which benefited the creation of a gender-sensitive approach in governmental policies and decisions. Moreover, the agreement among its members was that they would only address political and social issues and not undermine each other. So, the solidarity among these women was made clear by this. Nonetheless, women remained underrepresented in local and national politics, regardless of the high positions occupied by some exceptional women.³⁹

Steering Committee Curaçao was (in)directly co-responsible for the initiation of positive and women-oriented developments and the introduction of (legal) measures on the improvement of the position of local women in society. An example of this was the struggle for the elimination of discrimination against women, based on sex and marital status, in the public sector; a goal which was accomplished in 1983.⁴⁰ Due to its outspoken opinion on

33 Steering Committee Curaçao did not receive the required (financial or technical) support for this conference. Nevertheless, it was able to manage and organise it successfully. Relato annual 1987, Steering Committee: Gruponan di Damas Korsow (M. Leetz & J. da Costa Gomez), (no date), pp. 3-10.

34 The archive of Steering Committee Curaçao was lost due to severe rainfall. Information obtained from Mrs S Oosterhof, Mrs L Peternella-Pieters-Kwiers, Mrs A Balentin, and Mrs L Alberto.

35 Information obtained from Mrs A Balentin, president Steering Committee Curaçao 2012 on 31 August 2012.

36 For instance Mrs M Liberia-Peters became Prime Minister of the Netherlands Antilles after the fall of the Cabinet in 1984 (Cabinet Liberia-Peters I 1984-1986) and she held office twice afterwards (Cabinet Liberia-Peters II 1988-1990 and Cabinet Liberia-Peters III 1990-1993).

37 '*Forsa Femenina*' (Feminine Force) had already started its unofficial activities in 1968 under the guidance of Mrs L da Costa Gomez-Matheeuws. It was officially instituted in 1973 and active until 1977. Its objectives were the mental, political and professional awareness-raising among women. It organised many activities to further awareness among women and it maintained cooperation and affiliations with international and regional organisations and individual experts on women's development. '*Muhenan Nashonalista*' (Women of the National People's Party (PNP)) came into being in 1980 [translation by A.R.]. Information obtained from Mrs V Daflaar, on 16 April 2013; De Lannoy-Berg 2000, pp. 82-87.

38 The '*Akshon Demokratiko Femenina (ADEFA)*' means literally the 'Democratic Feminine Action' [translation by A.R.]. Some of its members occupied prominent positions in the political arena, such as in the Antillean Parliament (Mrs S Frans-Michel), and as member of the Executive Board of the island-territory Curaçao (Mr R Reuyl-Raven). It used to organise on periodical basis awareness-raising (political) activities and its members participated at several forums at international level. As a result of the ageing process and the lack of interest in politics by the younger generation the organisation has experienced severe drawbacks in its activities. It is currently not active. Other political parties like the '*Movementu Antiyas Nobo (MAN)*' had prominent female members, such as Mrs B Doran-Scoop, but they did not develop a female wing within the party. Information obtained from Mrs E Alders, on 4 October 2013 (by mail); Mrs M Liberia-Peters, on 29 August 2013.

39 Cijntje & Quirindongo 1992, pp. 129-141.

40 Relato annual 1987, Steering Committee: Gruponan di Damas Korsow (M. Leetz & J. da Costa Gomez), (no date), pp. 4-5; Lopez 1982, p. 98; Peternella-Pieters Kwiers 1985, p. 5; see also § 2.9.5.

women's, family and community matters, the Committee turned into one of the officially recognised discussion partners of the local and federal Executives. As a result of diminishing unity, and the lack of interest and unawareness of the majority of its members in politics, it was unable to transform itself into a real political counterpart. Its initial target group was enlarged with other groups of women between 1985-1995. In addition, professional women were permitted as members of organisations affiliated with the Committee.⁴¹

All in all, I have to note that several meaningful improvements on the (legal) position of women were accomplished due to actions partly led by Steering Committee Curaçao. Women became more visible and aware of their rights as a result of its efforts. Through training and gatherings among its member-organisations it convinced women to educate themselves further so that they could achieve the much needed economic independence and self-reliance.

As a consequence of circumstances which were not clear, the Committee lost its strong voice and influence in regard to women's and societal issues in the late 1990s. It had, however, by 2000 performed an investigation of gender-based discriminatory laws. It intended to address these measures in the following years. Between 2003 and 2006 it attempted to reorganise and introduce activities to strengthen its (internal) functions. Moreover, the Committee became painfully aware of its aging problem.⁴² On the occasion of its 30th anniversary in 2004 a conference⁴³ was organised where the main areas of development, derived from the Beijing Platform for Action, were addressed by local experts.⁴⁴

Despite its undeniable influence on socio-political issues in its early days, Steering Committee Curaçao lost its influence. It faced many (financial) challenges. With the signing of a subsidy contract with the local Executive, through the local Bureau of Women's Affairs,⁴⁵ in 2009 the financing of its services and projects was ensured. This constituted a guarantee for the continuation of its programmes for its member-organisations, individual women and the community.⁴⁶ I assume that the Executive of the new country Curaçao has continued this arrangement after 2010. Whether this assumption is correct is investigated in Chapter 8, where the latest activities of a selection of NGOs, including Steering Committee Curaçao, are addressed.

§ 4.3.2 *Union of Antillean Women (UMA) as a group pressing for change*

The first real revolutionary feminist organisation in the former Netherlands Antilles was the Union of Antillean Women (UMA)⁴⁷ which was established in 1975 by a dynamic group of middle class women. The goal of this organisation was the eradication of all forms of

41 Buesink-van der Horst 1986, pp. 9-12; Pieters-Kwiers 1994 (a), pp. 22-25; Doran-Scoop 1997, pp. 15-17.

42 '*Uni nos ta vense!*', Relato di Sekretario Steering Committee Curaçao 2003-2006 (no author and date); '*Konferensha evaluativo: 30 aña Steering Committee Curaçao*', Kòrsou 12 February 2005.

43 The conference was entitled '*Edukando nos yu homber I yu muhe pa un miho futuro*'. Translation [by A.R.]: Educating our son and daughter for a better future.

44 Relato final Konferensha 30 aña Steering Committee Curaçao, 15-16 October 2004 (Steering Committee Curaçao), '*Edukando nos yu hòmer I yu muhé pa un miho futuro*', 14 April 2005.

45 For more details on the setting up of this Bureau, see § 4.5.3.

46 Brochure Steering Committee Curaçao 2008-2011 (no date); Policy document on the Budget 2009 of the Island territory of Curaçao.

47 UMA is the abbreviation for '*Union di Muhenan Antiyanu*', which literally means the Union of Antillean Women [translation by A.R.].

discrimination against and subordination of women imposed by class division and former colonialism. The organisation was also active in social and cultural areas. Its objective was the creation of a liberating consciousness among women through actions and social activities. One of its main activities was awareness-raising about (the eradication of) violence against women during the early 1980s.

The Union of Antillean Women operated autonomously, which meant that it did not form part of Steering Committee Curaçao.⁴⁸ One of its memorable actions, undertaken with Steering Committee Curaçao and 'Hubentud '70'⁴⁹ and directed at the amelioration of the social situation of local women, was the occupation of inhabited houses which were intended for allocation to homeless single mothers and their children in 1978. This action led to the eventual establishment of the local housing association, 'Fundashon Kas Popular' (FKP)⁵⁰ in 1979.⁵¹ Prior to this, the patronage system had adversely influenced a just governmental policy on the granting of social housing to people in the lower social classes, who often were single mothers. Many of these women were victims of a male-dominated and sexually-oriented policy.⁵²

Other achievements were, inter alia, its involvement in the elimination of discriminatory laws, its campaigns directed at the awareness-raising on the reproductive rights of women and teenage pregnancy. Its membership of the Consultative body on Women's Affairs was also a major accomplishment. This body was set up in 1988 by the local Executive; the year around which UMA ceased to exist.⁵³ The inexplicable destruction and disappearance of some of its archive rendered it impossible for me to make a thorough assessment of its contribution to the empowerment of local women. So far as the importance of the above mentioned local consultative body is concerned, in-depth remarks on its role can be found in § 4.5.3.

§ 4.3.3 *The Women's Development Centre (SEDA)*

With the founding of the Women's Development Centre (SEDA) in 1980,⁵⁴ a centre was created which focused primarily on the introduction of socio-cultural activities and

48 Henriquez 2002, pp. 140-146.

49 This means: Youth '70s [translation by A.R.]. 'Hubentud '70' was an founded in 1970 by progressive and anti-colonial youngsters, after the upheavals of 1969, which had as its objective the strengthening of the development of the local people and working for social justice and cooperation. See Godfried 2006, available on www.afrocubaweb.com.

50 The majority (80%) of its clientele are women. The FKP has for many years not been able to cope with the housing demand. The community has been confronting a shortage of affordable (social) homes for particularly (single) mothers of the lower social classes. It directed its efforts at the building of more profitable housing projects, which (in)directly negatively influenced its social housing policy. The point-method which the FKP employs with regard to its granting of housing policy leads to an ineffective and unsatisfactory waiting period/list. Some of its clients have been waiting for up to 15 years for an affordable home. See *Kaderbeleid Volkshuisvesting* Curaçao 2007-2011, 31 December 2006; Derksen & Kooren 2008.

51 Information obtained from Mrs G do Rego-Kuster, on 16 August 2012; Mrs S Oosterhof, on 30 August 2012; see also Relato annual 1987, Steering Committee: Gruponan di Damas Korsow (M Leetz & J da Costa Gomez), (no date), pp. 10-11; Do Rego-Kuster 1990, p. 545; Henriquez 2002, p. 144; Derksen & Kooren 2008.

52 For more background details on its policy and operations, see van Dijke & Terpstra 1987, pp. 33-34.

53 After a couple of years UMA inexplicably suspended its participation in this consultative body. Information obtained from Mrs M Leetz-Cijntje (vice-president), on 15 December 2012. Installation Decree of the 'Overlegorgaan Vrouwenzaken' of the Executive of Curaçao, 8 March 1988, no. 88/980.

54 By-laws Women's Development Centre (SEDA), 13 February 1980.

programmes directed towards the assistance and the development of women and also men.⁵⁵ The SEDA came into being as a result of the necessity encountered by (members of) Steering Committee Curaçao for the existence of a training, documentation and development centre for women.

For the realisation of its initial activities it obtained financial support from 'SEDE Antiyas'⁵⁶ and also the Netherlands.⁵⁷ The objective of this foundation, in accordance with Article 2 of the By-laws SEDA, is to operate a centre on behalf of local women and their families, to provide opportunities to women for their development and recreation, and to defend their interests and those of their families. It aims at the realisation of structural changes for the improvement of the status of women. In this regard the SEDA has to work on: the elimination of all types of discrimination against women; the eradication of gender-stereotypes; the provision of opportunities to women to become economically independent individuals; and the training of young and adult women to become self-reliant and active participants in developmental processes.

Furthermore, the stimulation of leadership and the equipping of members of social groups with cultural, social, economic, legal and educational knowledge through information, training, courses and projects became the method it employed. Moreover, Article 3 paragraph c By-laws SEDA stipulates that for the accomplishment of its objectives it ought to organise cultural, social, informative and other activities. Effectively, the main activities of the Centre (SEDA) are divided into programmes on social support,⁵⁸ the education of (young) women and other target groups, such as (young) fathers and elderly women.⁵⁹

§ 4.3.3.1 Early contributions of the Women's Development Centre (SEDA)

In its first reports SEDA provided information on its activities, such as educational programmes, leadership training and social activities, aimed at strengthening the status of women. Already by then it had established and maintained cooperation with regional and (inter)national women's organisations. However, it had already come to the conclusion that more actions grounded on scientific research had to be effectuated for the achievement of the advancement of women.⁶⁰ Since its establishment SEDA has been seriously engaged in the accomplishment of its objectives.⁶¹

55 Cuales 1998, pp. 96-97.

56 The foundation '*Sentro pa Desaroyo di Antiyas (SEDE Antiyas)*', established in 1980, was an umbrella foundation that financed social activities of NGOs in the island-territories of the former Netherlands Antilles with development funds from the Netherlands. Each local foundation had its representative on its board. It started with a budget of less than Naf. 1 million (local currency) and ended with an annual budget of Naf. 5 million. It fitted its activities to the policy and programmes of the Executive Board of the respective island-territories. The Netherlands evaluated its funding activities periodically. Its activities were ended in the late 1990s. Information obtained from Mr A van der Hoeven, on 17 April 2014.

57 The building of SEDA was realised with the support of the Netherlands (Dutch Minister J de Koning), the Federal Bureau of Social Affairs and '*SEDE Antiyas*'. Buesink-van der Horst 1986, pp. 7-9.

58 Consider e.g. *Jaarverslag Individuele hulpverlening Januari t/m December 1995, Sentro pa Desaroyo di Hende Muhe (SEDA)* (M. Hamen), (no date).

59 *Verslag 'Aktiviteiten twee jaar Sentro di Dama (Vrouwencentrum)'*, July 1984 – December 1986, in: Peternella-Pieters Kwiers 1988 (Annex 2).

60 Ibid.

61 Ibid.; see also da Costa Gomez and Correa (no date); Pieters-Kwiers 1994 (a), pp. 12-22.

The importance and (social) function of SEDA for society in general and women in particular has been established, recognised and celebrated by many. An early survey conducted among women who utilised the services offered by SEDA has underlined this. SEDA has served many purposes for many women; moreover, it has had in general a positive effect on women, despite the fact that the nature of many of its activities did not correlate with the objective to stimulate and improve the development of women.

Regardless of the obstacles, its activities had in one way or the other an awareness-raising effect. It was however identified that SEDA would at a certain point face challenges related to its limited (skilled) personnel, space and financial means, particularly if it was contemplating the expansion of its target group. A warning was given in relation to the last-mentioned issue, as this development would eventually lead to the alteration of the Women's Development Centre's original objective⁶²; a situation which partially became reality. SEDA did finally widen its scope of action and its target group to include youngsters, families with social problems and the community at large. It adopted a more professional approach by hiring a permanent, well-trained director⁶³ in the early 1990s.

§ 4.3.4 *The Caribbean Association for Feminist Research and Action (CAFRA)*

The Caribbean Association for Feminist Research and Action (hereafter: CAFRA) was founded in 1985 in Barbados by a group of active feminists, activists and researchers from different Caribbean territories, including Curaçao.⁶⁴ The history of this regional umbrella women's organisation is inextricably linked with the further awareness about the history of oppression and colonial exploitation experienced by Afro-Caribbean women. As the developments around the international women's movement during the 1960s and 1970s led to the rise of consciousness among Caribbean women as well, they started to organise themselves in the fight for their development and liberation. The result was that the Caribbean women's movement recognised the necessity to create a regional co-operation and networking body.

CAFRA is a facilitator of the regional women's movement, which responds to the needs of the movement and it stimulates collaboration and solidarity among its member-organisations. Furthermore, the research and action orientation of the association was justified by the need for a new methodological approach to feminism and by the fact that research in itself was a form of action. Its activities include programmes and projects on areas related to the advancement of women.⁶⁵

Its objectives are, inter alia, the promotion and support of the continued growth and development of the feminist movement in the entire region, research into, analysis and documentation of the situation of women in the region from the perspective of ethnicity, class, culture and gender relations, the influence on policy at regional and international levels in Government, NGOs and institutions, and to provide a focal point for bringing together feminist organisations in the entire region.⁶⁶ It has created an ample network with regional

62 Beusink-van der Horst (no date).

63 Its first Director was Mrs J Henriquez, a graduate in women's studies.

64 The Curaçaoan Mrs Sonia Cuales was one of its co-founders. Henriquez (red.) 2002, pp. 127-134.

65 CAFRA, Focal Point for the Caribbean Sub-region of the region of Latin America and the Caribbean of 1994.

66 Companies Ordinance Chapter 31, no. 1, A Company Limited by Guarantee not having a share capital, Trinidad & Tobago, Articles of Association of the Caribbean Association for Feminist Research and Action (CAFRA), 16 July 1990.

and international organisations active in the areas of development and women's issues.⁶⁷ For the achievement of its goals it operates in five areas.⁶⁸ During its three annual general meetings it establishes its Board policy guidelines. The Regional committee meets annually and at this meeting the policy and programme direction is formulated. The continuation meeting, as a sub-committee of the Regional committee, also took place annually.⁶⁹

For some years now, at the local level, Curaçao has only had one real feminist-based organisation, which is CAFRA chapter Curaçao. It has been involved in and contributed to several projects and programmes of the Executive(s) in the field of promotion and protection of women's rights, such as the training of law enforcement officers on gender-based domestic violence.⁷⁰ Furthermore, it has been the only NGO thus far which has submitted (in 2001) a shadow report to the treaty-based Committee on the implementation at a domestic level of the obligations set out in the Women's Convention and on the status of the national gender policy and programmes directed to the advancement of women.⁷¹

§ 4.4 Participation of (representatives of) Executives and NGOs at the World Women's Conferences and Forums

The participation of both governmental and NGOs delegations at World Women's conferences and forums on women's rights and development provided me with insights on the main aspects and strategies or further actions towards the advancement of women at a local level. The awareness-raising among the federal and local Executives and NGOs led to this participation.

§ 4.4.1 *Participation prior to Beijing in 1995*

To begin with, the former Netherlands Antilles participated at the First World Women's Conference of 1975 in Mexico, under the coordination of the Federal Bureau of Social Welfare. In that same year and as a result of the UN International Women's Year the first Caribbean Development Congress took place in Curaçao with the participation of various UN organs, such as UNIFEM, ECLAC and a delegation from Latin America and the Caribbean.⁷² This illustrates the initial dynamic involvement of the former Netherlands Antilles in (inter)national developments on women.

The country also participated at the Second World Women's Conference held in Copenhagen, Denmark, in 1980. While a mid-term evaluation of the effectuation of the goals stipulated during the First World Women's Conference had been carried out, the

67 A list was available on www.cafra.org in 2013. As of 19 April 2015 this website was not accessible.

68 The areas are: communication and networking, education and consciousness-raising, institutional development, research and action projects regarding women's issues and solidarity, and actions on national, regional and international campaigns. See CAFRA, Focal Point for the Caribbean Sub-region of the region of Latin America and the Caribbean of 1994.

69 The list of previous meetings was on www.cafra.org per 2013, yet as of April 2015 information on this organisation was not accessible.

70 National Decree of 27 September 2001 (P.B. 2001, no. 9); see also CEDAW/C/NET/3/Add.2, pp. 6-10; CEDAW/C/NLD/4/Add.2, pp. 4-5.

71 Henriquez & Martis 2001.

72 Peternella-Pieters Kwiers 1985, pp. 4-5.

Second Conference studied guidelines⁷³ for (inter)national programmes to support women in the attainment of equal treatment in all possible areas.

As preparation for the Third World Women's Conference in Nairobi, Kenya, five regional intergovernmental meetings were held in 1984 by the Economic and Social Council.⁷⁴ The Regional Commission for Latin America, through the ECLAC Sub-regional Headquarters for the Caribbean,⁷⁵ stipulated activities and programmes on the development of women in the main areas of action for the Caribbean region.⁷⁶

The former Netherlands Antilles participated as an associate member of the ECLAC at the regional preparation meeting which took place in Cuba.⁷⁷ A delegation of Antillean NGOs was also present at the NGO Forum that took place simultaneously with the regional conference.⁷⁸ At this regional conference the Government presented the progress made on the advancement of women. Even then it pointed out that progress lay in the field of law⁷⁹ and in the transformation of the mentality and traditions of the Antillean, i.e. Curaçaoan, people in regard to the role of women. The justification for the change in mentality was to be found in increased awareness among the population and the reactivation of women's groups. This was later on underlined with the mention of the incorporation of representatives of the NGOs in the Antillean delegation⁸⁰ and the recognition of the valuable contribution of these organisations to the advancement and development of local women. Furthermore, the State-Government pointed out that its priorities then were the ratification of the Women's Convention and the increase of political awareness and participation of women with the contribution of women's organisations. The main areas of concern were education, employment and health. The Antillean Government recognised finally that it was the persisting limitations based on gender which allowed the continuation of the traditional subordinate roles of women. Many discriminatory legal measures kept this in place, in addition to the media which perpetuated the traditional role in gender-relations, despite some recorded progress.⁸¹

Hereafter, the former Netherlands Antilles participated as part of the Kingdom at the Third World Women's Conference in Nairobi with a delegation consisting of both governmental and NGO representatives.⁸² A separate delegation of Antillean NGOs was

73 A/Conf. 94/35, available on www.unwomen.org.

74 DPI/DESI NOTE IWD/31.

75 The sub-regional Committee for the Caribbean of the UN ECLAC was the Caribbean Development and Co-operation Committee (CDCC).

76 E/CEPAL/CDCC/G.115/Add.

77 'Ontwerp-richtlijnen voor de Antilliaanse delegatie naar de VN/Regionale ECLAC-bijeenkomst ter voorbereiding van de VN-Wereldvrouwenconferentie' te Havana, 18-23 November 1984 (no author and date).

78 Prior to this regional conference, several actions were taken by the federal Executive and NGOs in preparation for their participation at this regional conference and afterwards at the conference in Nairobi. Peternella-Pieters Kwiers (no date); Letter Minister of Welfare, Youth matters, Sport, Culture and recreation, ref. 7436/JAZ, 24 September 1984; Peternella-Pieters Kwiers 1988.

79 Consider the legal improvements mentioned in § 4.3.1.

80 The delegation consisted of the governmental representatives, who were Mrs L Moeniralam, E Meyers, I Doran and G Gil and NGO representatives, who were Mr M Apon, E Gumbs, L Peternella-Pieters Kwiers, S Giskus and J Cras. See Letter of L Peternella-Pieter-Kwiers to the Radio show 'Pueblo na Palabra', topic 'Di 4 Kongreso i Foro regional, organisa pa Nashonnan Uni, pa evalua e dekada di Hende Muhe (1975-1985), tené na Habana - Cuba di 16-23 di November 1984', 1 December 1984.

81 Statement of the Netherlands Antilles, Regional Meeting, La Habana, Cuba, 20 November 1984.

82 Pieters Kwiers 1986.

present at the NGO Forum that also took place in Nairobi.⁸³ The four main focus points agreed upon by the States in the Forward Looking Strategies meant that the former Netherlands Antilles had to work more intensively on their realisation at the domestic level in the years to come.⁸⁴ In considering the broad involvement and participation of the former Netherlands Antilles at the Beijing Women's World Conference of 1995, a more extensive elaboration follows below.

§ 4.4.2 *Preparation by the Executive for the Beijing Women's World Conference*

Remarkable efforts were undertaken to guarantee the participation of local and federal representatives of (non)governmental organisations at the Fourth World Women's Conference in Beijing in 1995.

First of all, since 1991 the federal Bureau of Women's Affairs and Humanitarian Matters had been involved in the preparation for the participation of the Caribbean region at this world conference. In addition, the federal Executive stimulated and contributed financially to the participation of several smaller Caribbean islands at a conference held in Curaçao in 1991.⁸⁵ At the Fifth ECLAC Regional Women's Conference, the adoption of a new regional Plan of Action⁸⁶ on the strengthening of the participation of women in the socio-economic development of Latin America and the Caribbean was decided upon. Between 1991 and 1994 the former Netherlands Antilles held the presidency⁸⁷ of the Board of Presiding Officers of the ECLAC Regional Women's Conference.⁸⁸ This Board adopted the Regional Programme of Action for the women of Latin America and the Caribbean 1995-2001⁸⁹ at the Sixth Regional ECLAC Women's Conference held in Argentina.

The Caribbean Governmental Sub-regional Conference in preparation for the Sixth Regional Conference and the Beijing World Women's Conference and the Caribbean NGO Forum took place in Curaçao in 1994.⁹⁰ The federal Bureau of Women's Affairs and Humanitarian Matters was the main governmental agency responsible for the preparations for the conference on behalf of the federal Executive for the Beijing World Women's Conference. Together with the Interdepartmental Advisory Group of the federal Executive

83 'Reporte NGOs nashonal na NGO-Foro di Nairobi', 10-19 July 1985 (no author), in: L. Peternella-Pieters Kwiers 1988 (Annex 3).

84 Pieters Kwiers 1986, pp. 18-19.

85 Information obtained from the then Prime Minister Mrs M Liberia-Peters, on 3 December 2013.

86 The existing Regional Plan of Action dated from 1977. See Jaarverslag 1994 en Algemene beschouwingen van het Buro Vrouwezaken en humanitaire aangelegenheden (B. Dougle), Willemstad, 4 April 1995, p. 20.

87 The presidency was embodied by the then Prime Minister Mrs M Liberia-Peters.

88 The former Netherlands Antilles was re-elected afterwards as board member and vice-president for the period 1994-1998. It permanently lost its membership of the Board of Presiding Officers in or around 2007/2008. Information obtained from Mr K Carlo and Mrs V Daflaar, on 13 September 2013.

89 UN ECLAC Regional Programme of Action for the women of Latin America and the Caribbean and other regional consensuses, 1995-2001, April 2006, LC/G.2239/Rev.1.

90 Pieters Kwiers & Essed-Fernandez 1994; Jaarverslag 1994 en Algemene beschouwingen van het Buro Vrouwezaken en humanitaire aangelegenheden (B. Dougle), Willemstad, 4 April 1995; *Pensa Global, Aktua Lokal: Dos ana (1994-1995) "zorgcontract"* Sentro pa Desaroyo di Hende Muhe (SEDA) ku Gobiernu Insular di Kòrsou I Programa 1996 (no date), pp. 50.

and SEDA representing the NGO sector, it was in charge of the compilation of the national report on the evaluation of the position of local women between 1985 and 1995.⁹¹

A Memorandum was compiled by the federal Bureau of Women's Affairs in 1995 containing an evaluation of the process on the implementation of measures ensuring the advancement of women, as stipulated in the Forward Looking Strategies during 1985-1995, which included a general analysis on the situation of women, several areas of priorities and a couple of strategic approaches.⁹² Noteworthy is the observation on the eight areas of priority in correlation with the national Governmental programme of 1994-1998 which addressed the gender policy. It was stated that this governmental programme had taken over the governmental model of 1970-1977 with regard to the gender policy, which was directed at the realisation of the independence of women connected to equality-based and sustainable development and the emancipation of women through changes in mentality. The methods employed related to the structural improvement of the position of women and girls and the eradication of gender stereotypes, and involved the cooperation and support of the mass media. Consequently, important areas of policy, such as family, health, education, labour, (inter)national cooperation, housing, violence against women, cooperation with the NGO sector and teenage pregnancy were itemised.⁹³

A comparison between the Governmental programme of 1994-1998 and the obligations set out in international Programmes for Action reached the conclusion that the national (gender)policy required urgent improvements. The national programme lacked the involvement and power of women in decision-making processes, and the development of a general policy and actions directed at the supervision of the effectiveness and status of the national machinery. The adjustment of the national policy for the incorporation of the gender aspect was to be addressed by the Interdepartmental Advisory Group.⁹⁴ Related to the strategic actions based on world and regional programmes, four selected areas of concern⁹⁵ were underlined. The national approach on an implementation plan was included. Most interesting were the remarks on the participation of women in the educational system, while (field) research was intended to be conducted on the awareness of local women of their educational opportunities. It was suggested that regional examples on the role of mass media would be applied.⁹⁶

91 'Women hold up half of the sky', Verslag deelname Nederlands-Antilliaanse delegatie aan Vierde VN Wereldconferentie Beijing, China, 4-15 september 1995, Bureau Vrouwenzaken & Humanitaire aangelegenheden/ Sentro pa Desaroyo di Hende Muhe (SEDA), 21 November 1995, pp. 9-10.

92 Memorandum van Hoofd Bureau Vrouwenzaken & Humanitaire Aangelegenheden (B. Dougle), *Analyse van de planning van de "follow up" van de evaluatie over de periode 1985-1995 inzake de uitvoering van de "Nairobi Forward Looking Strategies for the advancement of women"*, binnen de Nederlandse Antillen, 21 May 1995.

93 Ibid., pp. 2-10.

94 Ibid., p. 11.

95 The areas of concern were combating poverty, participation in the educational system, public health and violence against women.

96 'Women hold up half of the sky', Verslag deelname Nederlands-Antilliaanse delegatie aan Vierde VN Wereldconferentie Beijing, China, 4-15 september 1995, Bureau Vrouwenzaken & Humanitaire aangelegenheden/ Sentro pa Desaroyo di Hende Muhe (SEDA), 21 November 1995, pp. 12-18.

§ 4.4.3 *Participation of the Executive at the Beijing Women's World Conference*

The former Netherlands Antilles participated for the first time as observer⁹⁷ at the UN Women's Conference in Beijing due to its prominent role in the preparations of the Caribbean region. It also maintained good communications and cooperation with the delegation of the Netherlands as part of the Kingdom. As a matter of fact, the amplification of the possibilities to acquire more financial support from international agencies for regional programmes and the recognition of the negative influences of the SAPs on the economic opportunities of women were the most relevant accomplishments of this conference for the Caribbean region.

In conformity with the Beijing Platform for Action, the Netherlands Antilles was also obliged to compile and implement a national emancipation policy for the next five years.⁹⁸ The priority of the federal Executive then became the strengthening and the legal embodiment of the national machinery.

§ 4.4.4 *Preparation of NGOs for the Beijing Women's World Forum*

Several activities, such as lectures, were organised by the NGOs prior to the UN World Women's Forum in Beijing.⁹⁹ The Women's Development Centre (SEDA) acted as the coordinating body and the focal point for the NGOs at national level in preparation for their participation at the Beijing Forum. The activities were financed by the federal and local Executives and the European Community.¹⁰⁰

At national level the NGOs compiled their own report based on a survey on the situation of women between 1985 and 1994 coordinated by SEDA, financed by the federal Executive.¹⁰¹ The situation of women in the respective islands of the Netherlands Antilles, starting with their specific socio-cultural environment, was assessed. The status of the process of their empowerment and development was also included. Individual NGOs participated with information on their activities about the development of (young) women and their families. Many of these organisations did then widen the scope of their actions towards a family-based approach. The development and execution of activities to tackle the multi-dimensional issues of women's development became the focus and the target group was also enlarged.

All in all, I can state that the report contained valuable information on the programmes, the progress achieved in regard to socio-cultural, economic and political changes and the

97 The delegation consisted of three people: (1) the Minister of Social Welfare, Family and Humanitarian Matters (Mrs E Strauss-Marsera), (2) collaborator of the federal Bureau of Women's Affairs and Humanitarian Matters (Mrs A Phillips) and (3) representative of the NGO sector (Mrs J Henriquez).

98 Letter from the Head (Director) of the Bureau of Women's Affairs and Humanitarian matters (Mrs B Dougle), to the Minister of Welfare, Family and Humanitarian affairs, no. ref., 31 May 1995; '*Women hold up half of the sky*'; Verslag deelname Nederlands-Antilliaanse delegatie aan Vierde VN Wereldconferentie Beijing, China, 4-15 September 1995, Bureau Vrouwenzaken & Humanitaire aangelegenheden/ Sentro pa Desaroyo di Hende Muhe (SEDA), 21 November 1995.

99 Consider Pieters Kwiers 1994 (b); Henriquez (no date), pp. 2-5.

100 Annual report and General considerations of the federal Bureau of Women's Affairs of 1994, pp. 15-17; Henriquez (no date); Contract in eigen beheer voor de uitvoering van het project '*Op weg naar Beijing*' tussen de "*Stichting Sentro di Dama*" en de rechtspersoon Nederlandse Antillen, 9 March 1995.

101 See Jaarverslag 1994 en Algemene beschouwingen van het Buro Vrouwenzaken en humanitaire aangelegenheden (B. Dougle), Willemstad, 4 April 1995, p. 11; Pieters Kwiers 1994 (a).

future activities of local women's organisations.¹⁰² The report was discussed during the pre-conference of NGOs at national level. The pre-Beijing conference for NGOs was held to address important issues, such as the development process which local women were going through and the findings of the NGO report.¹⁰³ This document was subsequently incorporated in the national report that was presented at the regional preparation meeting for Latin America and the Caribbean.¹⁰⁴ The information provided by the Antillean representatives was intended to be included in the regional Plan of Action for Beijing 1995.

The Caribbean NGOs Sub-regional Conference in preparation for the Sixth Regional ECLAC Women's Conference and the Beijing World Women's Conference took place in Curaçao in 1994, simultaneously with the governmental conference. At this NGO conference the participating Caribbean countries, including the Netherlands Antilles, presented their respective national NGO reports.¹⁰⁵ In the reports concern was expressed about the progress in the field of advancement of local women related to the socio-cultural, economic and political challenges which local NGOs were facing at that time. The most salient features¹⁰⁶ in regard to the women's movement and the development of women on national level were set out.¹⁰⁷

CAFRA, as the focal point for the Caribbean, also presented a (draft) document on issues on the advancement of women at regional level.¹⁰⁸ Several resolutions were adopted on the most urgent women's issues that affected the daily life of Caribbean women. The report and the NGOs' recommendations for the Platform of Action, in which the framework of the CAFRA document was incorporated, were finally presented to the governmental delegations. The final document was then incorporated in the sub-regional document, which was adopted at the Sixth ECLAC Regional Women's Conference held in Argentina in 1994.¹⁰⁹

§ 4.4.5 *Participation and recommendations after the Beijing Women's World Forum*

The national NGO sector participated with a large delegation¹¹⁰ at the Beijing NGO Forum. The role of the NGOs on the implementation of the obligations set out in the Beijing

102 It concerned the Women's Development Centre (SEDA), the Steering Committee Curaçao, Foundation 'Pro-Alfa', Foundation 'Lechi Mama' (Breastfeeding), Yukondro, INFESE (Centre for Sexuality and Maternity Health education), SIFMA, Foundation 'Mangusa' and Responsible Parenthood Association.

103 Pieters Kwiers 1994 (c).

104 Pieters Kwiers 1994 (a), pp. 9-39; 'Pensa Global, Aktua Lokal': *Dos ana (1994-1995) "zorgcontract"* Sentro pa Desaroyo di Hende Muhe (SEDA) ku Gobiernu Insular di Kòrsou I Programa 1996 (no date), pp. 49-51.

105 Pieters Kwiers & Essed-Fernandez 1994.

106 There were a total of 20 features mentioned.

107 Pieters Kwiers & Essed-Fernandez 1994, pp. 17-20.

108 Ibid, pp. 30-38; 'Platform for Action', presented by the NGOs of the Caribbean Subregion, UN/ECLAC/UNIFEM Caribbean Subregion Conference: Preparatory to the fourth World Conference on Women 1995, Curaçao 27-29 June 1994.

109 Pieters Kwiers & Essed-Fernandez 1994, pp. 7, 42-49; 'Pensa Global, Aktua Lokal': *Dos ana (1994-1995) "zorgcontract"* Sentro pa Desaroyo di Hende Muhe (SEDA) ku Gobiernu Insular di Kòrsou I Programa 1996 (no date), pp. 11, 49-51.

110 There were participants from inter alia the Women's Development Centre, the Steering Committee Curaçao, Bonaire and Sint Maarten, and even the unions. Henriquez (no date).

Platform for Action, which entailed the undertaking of more concrete steps to ensure the further development of women, became more evident to them.

Many recommendations were formulated for the follow-up by the local NGOs that participated at the Beijing Forum under the coordination of SEDA. These recommendations were on two levels, firstly the political approach where pressure was to be put on the Executive to develop an emancipation policy starting from the twelve areas stipulated in the Platform for Action, and secondly the development and execution of projects and programmes in these areas.

Subsequently, an agenda for the execution of short-term projects and actions for the implementation of the Platform of Action was compiled. The most striking actions were inter alia organising the Post-Beijing conference on the methods of execution and realisation of policy measures, making the Executive and the Parliament aware of the implications of the Beijing Platform for Action, initiating the compilation of a national emancipation policy and the dissemination of the Platform for Action among the public by its translation into '*Papiamentu*.'¹¹¹

Several activities and projects on the implementation of the Platform for Action were afterwards organised by SEDA, and on some occasions in collaboration with Steering Committee Curaçao.

The next sections contain additional remarks on the specific actions undertaken by governmental agencies and local NGOs towards the execution of the tasks adopted at the different World Women's Conferences.

§ 4.5 Governmental actions following the UN World Women's Conferences

During the UN Decade for Women, proclaimed by the United Nations after the First World Women's Conference in 1975, several projects and activities were undertaken by the federal Executive, often in collaboration with local NGOs. The many accomplishments on the socio-cultural, economic, legal, political and general areas during this period were duly enumerated in the 'Evaluation report Decade of Women' of 1985.¹¹²

With the setting up of the Bureau of Social Welfare in 1974 pioneering work was performed in the field of the development of women and awareness among them. Thus, significant collaborations and programmes were set up after this conference between the federal governmental organisations and NGOs, led by this Bureau. With regard to legal measures on the unequal treatment of women, only a handful of measures, already mentioned in § 2.9.5, were recorded. However, the approval of the State-Government to the signing by the Kingdom of the Women's Convention without any reservations in 1980, while previous administrations¹¹³ had wanted to make reservations based on the discriminatory provisions incorporated in the National Ordinance on legal and material rights and obligations of civil servants (L.M.A.) 1964, is worthy of note.¹¹⁴ I was not able to retrieve other documentation to

111 Ibid., pp. 10-15.

112 Peternella-Pieters Kwiers 1985, pp. 1-14.

113 In this regard I refer to Cabinet Evertsz (1976) and Cabinet Rozendal (1978). It was under Cabinet Martina (1981) that the signing of the Convention without any reservation was realised.

114 Henriquez (no date), p. 7.

verify whether other measures were undertaken by the branches of Government concerned during the UN Decade of Women.

§ 4.5.1 *Actions after the Third World Women's Conference in Nairobi*

With the setting up of the federal Bureau of Women's Affairs and Humanitarian Matters in 1989 by the federal Executive,¹¹⁵ a measure complying with the obligation adopted at the Nairobi Conference of 1985 was accomplished.¹¹⁶ After this conference the Executive had been recommended to institute a multi-departmental national machinery consisting of federal and local governmental representatives, governmental agencies, labour unions and NGOs.

This national machinery would have as its main task the realisation of a cohesive gender policy and the execution and implementation of the Forward Looking Strategies.¹¹⁷ Its predecessor, the Bureau of Social Welfare, had been dissolved in 1986.¹¹⁸ Between 1986 and 1989 no particular governmental agency was in charge of (the coordination of) women's issues. Apparently, the initial intention was to transform SEDA into the federal Bureau of Women's Affairs. It would have been in charge of the many (short- and long-term) challenges related to the development of women at national level.¹¹⁹ This approach was abandoned due to political decisions and a lack of skilled personnel.¹²⁰

The objective of the federal Executive through the establishment of the federal Bureau for Women's Affairs was to improve the position of women. Its main objective and task were to act as a coordination and advisory institute within the federal governmental structure in regard to policy on women and gender. The Bureau was in charge of setting up the Interdepartmental Advisory Group which in its turn was responsible for advising the federal Executive on women's and gender issues. As a consequence of austerity measures, the federal Bureau for Women's Affairs and Humanitarian Matters was closed in 1995.

Prior to this, however, the Interdepartmental Advisory Group on women chaired by the federal Bureau for Women's Affairs and Humanitarian Matters was set up in 1991,¹²¹ which had as its objectives the assessment of legal measures upholding discrimination against women and advising the Executive on women's and gender matters. It supported the federal Bureau of Women's Affairs and Humanitarian Matters with its programmes and operations. The Interdepartmental Advisory Group was given a crucial role in the education and distribution of knowledge about women's rights. Its tasks were the presentation of national draft laws on the improvement of the status of women, the supervision of the implementation of these legal measures and the obligations set down in international conventions regarding women, the promotion of the incorporation of women's and gender aspects in the policy of governmental departments and the promotion of cooperation

115 Its main task was to address the compliance with the obligations of the former Netherlands Antilles regarding women's rights, rights of the elderly and people with disabilities.

116 GA A/RES/40/108, paras. 106 and 125; Pieters Kwiers 1986.

117 Pieters Kwiers 1986, pp. 20-21.

118 Jaarverslag 1994 en Algemene beschouwingen van het Buro Vrouwenzaken en humanitaire aangelegenheden (B Dougle), Willemstad, 4 April 1995, p. 4.

119 Verslag 'Aktiviteiten twee jaar Sentro di Dama (Vrouwencentrum)', July 1984-December 1986, in: Peternella-Pieters Kwiers 1988 (Annex 2); Pieters Kwiers 1986, p. 21; Consider also Pieters Kwiers 1988 (b).

120 Information obtained from Mrs M Leetz-Cijntje on 5 December 2012; Mrs S Pieter Kwiers on 8 December 2012.

121 This took place under the leadership and guidance of Mrs B Dougle.

with the local Consultative body on Women's Affairs, for the creation of a cohesive gender policy.¹²²

With the creation of the Ministry of Welfare, Family and Humanitarian Affairs in 1994,¹²³ the federal Bureau of Women's Affairs and Humanitarian Matters came under the executive Department of Welfare, Family and Humanitarian Affairs (DWGHZ) which was instituted in 1995. Up until its closure the status of the federal Bureau of Women's Affairs within the governmental structure was not clearly or legally defined. Regardless of this omission, the effectuation of the policy and programmes developed by the federal Bureau of Women's Affairs in the respective island-territories was exercised by local governmental agencies and NGOs.¹²⁴

§ 4.5.2 *Actions after the Fourth World Women's Conference in Beijing*

Following the Beijing Platform for Action, the components for the development of a cohesive gender and emancipation policy for the period 1996-2000 were formulated by the end of 1995. Additional activities included (1) providing information to the Executive and Parliament on the implication of the obligations set out in the Beijing Platform for Action, (2) the translation of the Platform for Action into '*Papiamentu*' and its subsequent dissemination, (3) the upgrading of personnel of the Interdepartmental Advisory Group for the effective implementation of policy measures, (4) initiation of actions towards the compilation of a national emancipation plan, (5) consolidation of regional cooperation and cooperation between the Executives with the NGOs, (6) the establishment of a documentation centre, and (7) the establishment of Inter-ministerial cooperation.¹²⁵

With the closure of the federal Bureau of Women's Affairs and Humanitarian Matters in 1995, its responsibilities were transferred to the Department of Welfare, Family and Humanitarian Affairs (DWGHZ).¹²⁶ This Department was, between 1996 and 2001, in charge of the development and coordination of, among other things, a national gender policy.¹²⁷ It subsequently formulated directions for the implementation of the Beijing Platform for Action. For every area specific priorities were set which were to be accomplished in 1996 and 1997, but more important was the recognition of gender mainstreaming as, up until then, this had not been done.¹²⁸

122 Ministerial decree of the Minister of General Affairs, 8 March 1991, no. 1744/JA.

123 P.B. 1994, no. 138.

124 Jaarverslag 1994 en Algemene beschouwingen van het Buro Vrouwezaken en humanitaire aangelegenheden (B Dougle), Willemstad, 4 April 1995, pp. 6-7, 16.

125 '*Women hold up half of the sky*', Verslag deelname Nederlands-Antilliaanse delegatie aan Vierde VN Wereldconferentie Beijing, China, 4-15 September 1995, Bureau Vrouwezaken & Humanitaire aangelegenheden/ Sentro pa Desaroyo di Hende Muhe (SEDA), 21 November 1995, p. 47-55; '*Pensa Global, Aktua Lokal: Dos ana (1994-1995) "zorgcontract"*' Sentro pa Desaroyo di Hende Muhe (SEDA) ku Gobiernu Insular di Kòrsou I Programa 1996 (no date).

126 It obtained a much broader remit than its predecessor. See '*Memorandum inzake de Evaluatie van Hoofdstuk 8 van het Regeerprogramma 1994-1998: Sociaal- en Welzijnsbeleid, Vrouw en Ontwikkeling en Humanitaire Aangelegenheden*', (no date).

127 '*Gender policy Nederlandse Antillen*', in: '*Beleidsterrein gender: Grondslagen beleidsgebied, gender policy Nederlandse Antillen (concept), portefeuille 2008*', (no author and date), (annex).

128 '*Beleidsnotitie inzake de implementatie van het Beijing 'Platform for Action' door de Regering van de Nederlandse Antillen*' (Departement van Welzijn, Gezins- en Humanitaire Zaken), 22 May 1996.

Under its regime the Interdepartmental Advisory Group on Social Welfare, Family and Humanitarian Affairs, that had as its main task to present propositions to the federal Executive on the area of social development and to give advice on policy from an interdisciplinary and integral approach, was to have been reinstated in 1997.¹²⁹ This advisory group was intended to continue the work of its predecessor on gender and women's development which entailed, inter alia, the continuation of the implementation of the obligations set down in the Women's Convention and the Beijing Platform for Action, the creation of structural cooperation between the organisations at federal and local level, the elimination of violence against women through the support for the establishment of a crisis centre, the stimulation of consultation and cooperation structures with the NGOs and the strengthening of cooperation on women and development within the ECLAC and CARICOM context.¹³⁰ Following the last-mentioned obligation, since 1996 seminars on development of women and gender had been organised based on regional cooperation between the Netherlands Antilles, Aruba and Surinam.¹³¹

However, the new Interdepartmental Advisory Group was never officially instituted. Many of the intended projects and programmes, such as the establishment of a crisis centre, were not executed mainly due to the implementation of austerity measures in the late 1990s and early 2000s. Since then the emphasis of national social policies started with a participatory and family-based approach.¹³²

§ 4.5.3 *Actions after the UN World Women's conferences by the local Executive*

By 1988, at a local level, the Executive had instituted the independent Consultative body on Women's Affairs. The reasoning behind the creation of this body lay in international events such as the UN Decade of Women, the participation of the former Netherlands Antilles at the Third World Women's Conference in Nairobi in 1985 and the strategies adopted at this conference which the federal Executive recognised and was bound by. The recommendations made by SEDA on the creation of a permanent consultative body on women's issues, and the establishing of four committees also influenced this decision. However, prior to its creation a survey was conducted on the necessity of such a body by the local Executive in 1988.¹³³

Eventually, the tasks of the consultative body became the compilation of a policy and a plan of action and to give advice on matters related to policy which concerned women. This body consisted of representatives of governmental agencies and the labour unions, and

129 With the setting up of this organ the existing Interdepartmental Advisory Group of the federal Bureau of Women's Affairs would have been made redundant. See *'Terms of reference voor de oprichting van een interdepartementale adviesgroep Welzijn, Gezins- en Humanitaire zaken op de Nederlandse Antillen'* (Departement van Welzijn, Gezins- en Humanitaire Zaken), Willemstad, 13 June 1996.

130 *'Principal Guidelines of policy of the Minister for Welfare, Family and Human Affairs 1996-1998'* (Department of Welfare, Family and Humanitarian Affairs), September 1996; *'Memorandum inzake de Evaluatie van Hoofdstuk 8 van het Regeerprogramma 1994-1998: Sociaal- en Welzijnsbeleid, Vrouw en Ontwikkeling en Humanitaire Aangelegenheden'*, (no date), pp. 6-8.

131 This regional cooperation was signed in May 1996 and it had a duration of 3 years. Consider *Verslag van het regionaal seminar, 'Genderbewustwording en beeldvorming van de vrouw in de media'*, Oranjestad-Aruba, 21-22 September 1996.

132 Its predecessor continued its advisory work up until 1998. Information obtained from Mrs V Daflaar and Mr K Carlo, on 13 September 2013; Mrs M Russel-Capriles, on 30 October 2013.

133 Peternella-Pieters Kwiers 1988.

of the women's organisations Women's Development Centre (SEDA), Union of Antillean Women (UMA) and Steering Committee Curaçao among others.¹³⁴ With its creation the local Executive recognised the necessity to focus more attention on and emphasise the proper development of women, through which a more structural approach on women's issues was created. It had a similar role and authority to the Socio-Economic Council¹³⁵ at the federal level. It had broad authority on the areas¹³⁶ on which it was allowed to give advice.¹³⁷

Afterwards the Consultative body on Women's Affairs did recognise that one of its weaknesses was the lack of support by a specialised institution on women's issues. Subsequently, by 1993 it requested the setting up of such an institution, which would, inter alia, have as its objective the support of the local Executive and the Consultative body on Women's Affairs on women's and gender matters. It would also act as the focal point for the local Executive and coordinate an information and documentation centre on women's matters.¹³⁸

The operations of the local consultative body suffered from the usual backlog in the course of time, as a result of the lack of interest and guidance by the local Executive through the respective Insular Councillors of Social Affairs.¹³⁹ I assume that it was dissolved after the birth of 'autonomous' Curaçao, as it is not included in the new structure of the Ministry of Social Affairs, Labour and Welfare.¹⁴⁰

By 1995, the local Executive had instituted its own Bureau of Women's and Humanitarian Affairs. This institution came into being after the Beijing Conference and as a result of the obligations mandated in its Platform for Action. As a networking organisation its objectives were the further development, participation and emancipation of local women, the family and other specific groups in society. This local Bureau for Women's Affairs, which came under the Councillor of Social Affairs,¹⁴¹ established and maintained communication and cooperation with the local NGOs. Due to the inexplicable disappearance of the documentation about its operation and authorities, I was not able to include an analysis of its operations on the advancement and emancipation of women. The Bureau was finally closed after the restructuring of the former Netherlands Antilles in 2010. The new governmental structure and the Ministry responsible for the effectuation of a gender policy are extensively discussed in Chapter 8.

134 Installation Decree of the 'Overlegorgaan Vrouwenzaken' of the Executive of Curaçao, 8 March 1988, no. 88/980, as adapted by Insular Decree on adaptation of the 'Overlegorgaan Vrouwenzaken', 2 October 1988, no. 88/8328/5977.

135 The Socio-Economic Council was an official consultative body of the federal Government which gave advice to the Government on socio-economic matters. See National Decree of 26 November 1970 on the creation of the Socio-Economic Council, *P.B. 1970, no. 136* as adapted.

136 Article 11 Installation Decree of the Executive of Curaçao, 8 March 1988, no. 88/980.

137 Best 1991.

138 Vice-president of the Consultation body Women's Affairs (M Leetz-Cijntje) to the Executive Board of Curaçao, no ref., topic 'Definitieve voorstel Studiedienst Vrouwenzaken', 24 May 1993.

139 Information obtained from the Vice-president of the Consultative body on women's affairs, Mrs M Leetz-Cijntje, on 5 December 2012.

140 Businessplan Ministerie van Sociale ontwikkeling & Welzijn 2010-2014, Willemstad, 3 May 2010; Businessplan Ministerie van Sociale ontwikkeling, Arbeid & Welzijn, 2 November 2011 (revised version).

141 Its official name is the sector of Public Health and Social Development.

§ 4.6 Actions after the World Women's Conferences and Forums by NGOs

In considering that many activities and initiatives related to the advancement of women were taken as a result of the outcomes of international conferences on women's rights, I examine the actions undertaken by local NGOs in this section. Most of these activities were stimulated, coordinated and financially supported by firstly the federal Bureau of Social Welfare and later the federal Bureau of Women's Affairs and Humanitarian Matters.

§ 4.6.1 *Actions after the First and Second World Women's Conferences*

The period between the First World Women's Conference in Mexico (1975) and the Third World Women's Conference in Nairobi (1985) is characterised as a period when for the first time countless activities and actions were consciously undertaken directed at the advancement and development of women at local level by women's organisations. In their evaluation report of 1985 the Steering Committee Curaçao and the Women's Development Centre (SEDA) described extensively the progress made on the development of women, specifically in the areas of equality and peace, labour, education and health.¹⁴²

In general, many of the actions undertaken by particularly the Steering Committee Curaçao concerned awareness and educational activities, the establishment and strengthening of cooperation with other (non)governmental organisations, a contribution to the signing of the Women's Convention in 1980 by the Netherlands Antilles and the creation of the local consultative body on women's issues.¹⁴³ Besides these accomplishments the Committee also drew attention to the registered constraints and impediments for the further advancement of women in social, economic, political and legal areas. The impediments in the social areas related to, for instance, the lack of unity and solidarity among social groups and women, the lack of support within the family scene, the lack of integration of the younger generations and grassroots (lower social class) women in the women's movement. The economic impediments included the consequences of economic crises on the further development of women, the exploitation of workers, particularly women and the materialism among local women. With regard to legal constraints, discriminatory laws which needed to be adapted to achieve the proper protection of women, particularly women of the lower social classes, were enumerated.

Consequently, several strategies in the field of education, transformation of power structures, research and the establishment of a local agency on women's matters to address these challenges and constraints in the period between 1985 and 2000 were presented.¹⁴⁴

§ 4.6.2 *Actions after the Third World Women's Conference in Nairobi*

The Women's Development Centre (SEDA) played an important role in the efforts for the realisation of the recommendations stipulated in the Forward Looking Strategies. To start with, in 1987 a mini-conference was organised by SEDA where in-depth attention was dedicated to the four main areas of priority identified in the third UN World Women's Conference in Nairobi (1985). The implementation and accountability of the strategies on

142 Peternella-Pieters Kwiers 1985.

143 For further elaboration consider § 4.5.3

144 Peternella-Pieters Kwiers 1985, pp. 15-18.

the real accomplishment of the advancement of women's rights at national level by 2000 were addressed. For each area of concern national strategies were formulated.

All in all, I deduce that in each area the rise of awareness through educational programmes was suggested. Adult education and development of both men and women through programmes and training were suggested for the accomplishment of a change in mentality in favour of the further emancipation of (lower-class) local women. In some areas, such as the economic independence of women and the elimination of domestic (gender-based) violence, adaptation of laws was proposed. Furthermore, specific strategies and suggestions were stipulated for areas of concern, like women and power, the economic independence of women, and the eradication of domestic (gender-based) violence.¹⁴⁵

A major issue was the participation of the community and grassroots organisations in the developmental process of women. Although social and economic lower class women had organised themselves considerably by this point in time, their full progress and participation in socio-economic and political processes lagged behind. Not all women were reached during the UN Women's Decade.

The integration of grassroots women in the process of development proved to be more difficult than anticipated. Moreover, they were the ones most in need of progress and assistance as they found themselves in a very vulnerable and unhealthy socio-economic situation. Consequently, techniques and approaches for the improvement of the participation of the community and grassroots organisations were examined. Suggestions were made about the way to reach grassroots women through women's group representatives in community organisations, the application of educational instruments for their advancement and a change in mindset among governmental agencies and the community on the position and needs of these women.¹⁴⁶

With the celebration of its tenth year of existence in 1990, the Centre (SEDA) also incorporated its future plans and activities,¹⁴⁷ which again included the recognition of the relevance of carrying out scientific research to substantiate its activities, directed at the socio-economic challenges which women in particular and the community in general were confronting. Furthermore, the urgent need to create a local Bureau on Women's Affairs by the local Executive, as mandated in the outcome of the World Conference at Nairobi, was mentioned, together with the creation of a documentation centre on women's issues replacing the Welfare Bureau. Its participation at international and regional forums had to be guaranteed as well. SEDA reiterated its commitment to its participation in the Consultative body Women's Affairs and to its cooperation with the Federal Bureau of Women's Affairs and Humanitarian Matters for the creation of a national machinery.

The Centre and other bodies continued their activities. One of the Centre's actions was the compilation of a plan of action on the implementation of the strategies formulated in the Forward Looking Strategies. This Post-Nairobi Plan of Action contained a timeframe up until 2000 during which different objectives had to be realised in the Netherlands Antilles from a NGO perspective. The challenges registered for the realisation of the objectives had to be addressed through different disciplines and strategies where (board) members of

145 Pieters Kwiers 1987 (a); Pieters Kwiers 1987 (b).

146 Pieters Kwiers 1987 (b).

147 *'Na kamindat pa nos konose nos berdatnan'*, Programa anual di Sentro pa Desaroyo di Hende Muhe, 15 May 1991, pp. 6-7.

the Centre (SEDA), Steering Committee Curaçao and professionals would be involved.¹⁴⁸ As a follow-up, the seminar entitled '*Con sigui awor*'¹⁴⁹ was organised for professionals and volunteers, tackling the subject of their contribution to the further empowerment of women.¹⁵⁰ This activity was followed by a mini-conference and later on by another seminar. The main topics were the already identified implementation of measures on the four main areas of the Forward Looking Strategies, the Community and grassroots organisations. Subsequently, SEDA set up four commissions to work on the implementation of measures in these areas.¹⁵¹ The 1990 symposium on women and the sex-based discrimination in the tax-system also has to be mentioned in passing.¹⁵²

Despite all these efforts, the Centre and other actors came to the conclusion that, for the continuation of awareness activities, the contribution of professionals and individual women (and men) was required. The creation of a permanent consultative body as a discussion partner for the Executive became imperative.¹⁵³ The view was that many more actions had to be undertaken for the realisation of the advancement of local women.¹⁵⁴ Subsequently, projects and activities to help in the accomplishment of its plans were identified.¹⁵⁵

For the achievement of its objectives, including the upgrading of its personnel and its board members, SEDA has been receiving, since 1994,¹⁵⁶ a partial subsidy from the local Executive, through the so-called '*zorgcontracten*'. As SEDA had been effectuating part of the local gender-related policy, the local Executive guaranteed the execution of its programmes through this structural¹⁵⁷ financial support.¹⁵⁸ However, SEDA had many obligations to comply with under these subsidy contracts.¹⁵⁹ These obligations were afterwards divided into three main areas, which were the obligation to provide social support,¹⁶⁰ to organise courses and training, and to give information to the public. Under the area of social support also fell the execution of the obligations set out in the international Platform of Action adopted at the Beijing World Women's Conference in 1995. The establishment of collaboration with Steering Committee Curaçao, the participation on policy consultations with the local Bureau

148 Pieters-Kwiers 1988 (a).

149 This means: 'How to continue now' [translation by A.R.].

150 Pieters Kwiers 1988 (c); Da Costa Gomez & Pieter Kwiers 1988.

151 Da Costa Gomez & Correa (no date).

152 This symposium was held at the national university on 27 October 1990. See Winklaar 1990.

153 Pieters Kwiers 1987 (a); see also Winklaar 1990.

154 Da Costa Gomez & Correa (no date).

155 '*Na kamindat pa nos konose nos berdatnan*', Programa anual di Sentro pa Desaroyo di Hende Muhe, 15 May 1991, pp. 10-48.

156 The Women's Development Centre was the first NGO which received financial support through a contract from the local Executive in 1994. Subsidie-contract tussen het Eilandgebied Curaçao en Stichting Fundashon Sentro di Dama (SEDA), 27 January 1994; '*Pensa Global, Aktua Lokal*': *Dos ana (1994-1995) "zorgcontract"* Sentro pa Desaroyo di Hende Muhe (SEDA) ku Gobiernu Instular di Kòrsou I Programa 1996 (no date).

157 The contracts are only valid for a defined period of time and most of them had a duration of one or two years. Consider in this context the various subsidy contracts of the Women's Development Centre (SEDA).

158 Since 1999 the amount has been set at Naf. 350,000. This financial support has remained unmodified since then.

159 Subsidie-contract tussen het Eilandgebied Curaçao en Stichting Fundashon Sentro di Dama (SEDA), 27 January 1994; Subsidiecontract Eilandgebied Curaçao – Fundashon Centro di Dama, 5 Juny 1997; Samenwerkingscontract Eilandgebied Curaçao – Fundashon Centro di Dama 2003, 11 August 2003.

160 This entailed, inter alia, both social and legal guidance and support to battered women and their families.

of Women's Affairs, the Department of Welfare, Family and Humanitarian Affairs and the Bureau of Foreign Affairs, also formed part of its obligations.¹⁶¹

§ 4.6.3 *Actions after the Fourth World Women's Conference in Beijing*

During the Fourth World Women's Conference women wanted to embrace and use their many human rights to move forward. As a consequence, a Post-Beijing Conference was held in 1996 in Sint Maarten on the twelve critical areas¹⁶² on the development of local women. The obligations set out by the Beijing Platform of Action for both the State-Government and the NGO sector had by then been addressed.¹⁶³ However, not much concrete information has been made available or found on local activities and measures implemented by NGOs after the adoption of the Beijing Platform for Action, and more specifically after the different periods of reviews of the implementation of this Platform for Action by the United Nations.

I only found additional information on the projects and activities of the Women's Development Centre (SEDA) recorded in, inter alia, its periodical subsidy-contracts with the local Executive. The Centre had an obligation to give information and advice on, and coordinate social support to women and their families and also give information on gender, emancipation and on sustainable development as set out in the Beijing Platform for Action.¹⁶⁴ It described its annual execution programme in which emphasis was put on specific issues, like the formulation of policy suggestions on the eradication of gender-based violence and the discrimination of women, and on projects on the eradication of the subordination of women and the realisation of their economic and social self-reliance.¹⁶⁵

Lastly, the most noticeable contributions of SEDA for the legal advancement of women were its efforts in favour of the reform of family law, in particular with regard to a legal process for establishing paternity. Many discussions and seminars were held on the topic in the late 1990s.¹⁶⁶ Its efforts led to the amending of the provisions concerned, which only came into force in 2012. Because of the importance of this, an extensive elaboration follows on this subject and many others in Chapter 10.

§ 4.7 **Conclusion**

In spite of shortcomings in the accessibility of reliable (academic) sources on the history of the women's movement in Curaçao and the contribution of governmental agencies and NGOs to the development of local women, as a consequence of the loss of archives and the

161 Subsidiecontract Eilandgebied Curaçao – Fundashon Centro di Dama, 28 October 1999; Aanvraag voor zorgcontract 2002-2003, Fundashon Sentro di Dama, Curaçao, 18 March 2002; Samenwerkingscontract Eilandgebied Curaçao – Fundashon Centro di Dama 2003, 11 August 2003.

162 For the identified areas consider § 3.8.2.

163 Pieters Kwiers 1996.

164 Article I.1.2 para. 2c of the Subsidy-contract SEDA, 5 June 1997; Article 1 para. 2c of the Subsidy-contract SEDA, 28 October 1999; see also Art. 1 para. 2c the Petition for Subsidy for 2002-2003 by SEDA, 18 March 2002.

165 This information is derived from the '*Werkprogramma*' 2002-2003, as incorporated in the Petition for Subsidy for 2002-2003 by SEDA, 18 March 2002. The signed subsidy-contracts enhancing this programme could not be retrieved.

166 De Boer 1996; '*Manifèsto di SEDA: Famia den nos sosiedat*' (Fundashon Sentro di Dama), Kòrsou 18 April 1995 (no autor); '*Pensa Global, Aktua Lokal: Dos ana (1994-1995) "zorgcontract" Sentro pa Desaroyo di Hende Muhe (SEDA) ku Gobièrnu Instular di Kòrsou I Programa 1996* (no date), pp. 43-46.

lack of cooperation of people involved in the process, I was able to obtain a picture of the developments concerned.

First of all, many people are not aware of the fact that the influence of the women's movement had already (un)consciously manifested itself in the 1940s, during the process for the attainment of the voting right and the quest for autonomy in the colony of Curaçao, through activities organised by women active in political parties. Thus, the emancipation process experienced by women in Western societies during the first wave of feminism was not at all comparable with the process which local women went through. With the worldwide effects of the second wave of feminism in the 1960s, and other domestic socio-economic changes, women became aware of their rights, and so their need for further advancement grew.

Prior to this development, they used to organise themselves in mainly religiously-based organisations. Despite the social and moral support which these organisations provided to women, they did not confront the socio-cultural and legal constructs that kept women in a subordinated and unequal status. The awareness process started at the beginning of the 1970s. As the objective of the second wave of feminism was the realisation of the economic independence of women, the discrimination which local women experienced based on their marital status and sex became painfully visible. The establishment of a Commission in 1971 by the federal Executive, with the task of giving advice on discriminatory laws was the first indication towards the elimination of some of the disadvantages experienced by local women.

With the institution of the federal Bureau of Social Welfare in 1974 governmental efforts were undertaken directed towards programmes and support for the further advancement of women. Women obtained for the first time a voice in local and national politics and societal issues through the establishment of the umbrella organisation Steering Committee Curaçao in 1974. The Union of Antillean Women (UMA), founded in 1975, with its more revolutionary characteristics, was also of great importance in the fight for the rights of women up until the late 1980s. The former organisation became an officially recognised dialogue partner for the Executive, in other words a force which had to be reckoned with. Several political parties created or strengthened their female wings as a reaction to the success of assertive women active in the Steering Committee Curaçao. The influence of this organisation weakened afterwards as a result of many factors, such as the ageing problem it confronted.

Seemingly, many activities in the field of women's advancement organised by local women's organisations were stimulated and financed by the Executive, through the Bureau of Social Welfare. The effects of international events, such as the celebration of UN International Year of Women, the first Caribbean Conference on the development of Women held in Curaçao in 1975, and the four World Women's Conferences and NGO Forums were undeniable. They led to the understanding of the problem of the subordination of local women and their need to ameliorate their situation. So, the accomplishment of improvements in the position of women, such as the elimination or adaptation of several discriminatory laws, since 1975 and the introduction of activities and educational programmes directed towards the advancement of women became a reality. Women obtained afterwards opportunities to develop themselves and participate in societal processes. Several of them came to hold (politically) powerful positions in society.

In spite of this progress, many women, particularly those in the lower social strata, lagged behind, as they did not receive the required (educational and financial) support to develop themselves adequately. So, with the establishment of the Women's Development Centre (SEDA) in 1980 a milestone for assisting women in their development was accomplished. The many activities and (educational) programmes it organised and the upgrading process it went through afterwards, together with the broadening of its target group confirmed this. CAFRA, as the facilitator on regional level since 1985, has also given its support to the empowerment of women in society.

All in all, although I can conclude that several women's organisations have made a valuable contribution to the further development of local women, often with the financial support of the Executive, I can nonetheless not yet speak of an effective and full-fledged emancipation of Curaçaoan women, as the process was hampered by many factors.

Thankfully the framework on the development and the rights of women provided after the consecutive World Women's Conferences gave additional direction and tools for the activities that had to be undertaken by both NGOs and (local and federal) Executives to accomplish the real advancement of women. Actually, the governmental structure on women's issues underwent the necessary changes as a consequence of international developments. This expresses itself at the local level in, inter alia, the institution of the consultative body on women's affairs in 1988 pursuant to the Forward Looking Strategies.

At a federal level, the creation of the federal Bureau for Women's Affairs and Humanitarian Matters followed in 1989, which was of great importance for the further strengthening of the governmental framework for the programmes and policies on the development of women and the initiation of the creation of the national machinery. Since 1991 the Interdepartmental Advisory Group, chaired by the federal Bureau for Women's Affairs, has acted as the consultative organ for the federal Executive on gender and women's issues. Moreover, due to the efforts of this Bureau, the former Netherlands Antilles participated at many significant regional conferences on women's development in the early 1990s, in preparation for the Fourth World Women's Conference in Beijing of 1995. As a consequence of this the country was for the first time present as an observer at this UN conference, which was a major accomplishment.

Local NGOs also participated at the NGO Forum, after undertaking many local, national and regional activities in preparation for it, under the coordination of the Women's Centre (SEDA), and with the (financial) support of the federal Bureau of Women's Affairs and Humanitarian Matters. Strangely enough, up until its closure in 1995, the federal Bureau of Women's Affairs and Humanitarian Matters, as the successor to the federal Bureau of Social Welfare, did not have an official status in the governmental structure, despite its many valuable activities and its support in the field of the development of women. Its tasks were transferred to the Department of Welfare, Family and Humanitarian Affairs, which with its much broader remit, took charge of the execution of the obligations set out in the Women's Convention and the Beijing Platform for Action. One of its objectives was the development of a cohesive gender policy for the entire Netherlands Antilles. Although plans were made for short-term activities for the implementation of the Beijing Platform for Action, many of the objectives were not met. One noteworthy accomplishment was the strengthening of regional cooperation through the regional agreement between the former colonies of the Netherlands on gender and women's development in 1996.

At a local level the Bureau of Women's Affairs, as an executive agency of the local Executive, was instituted in 1995. It was in charge of the establishment and maintenance of cooperation with the local NGOs active in the field of women's and gender issues. Regrettably, despite the fact that the Beijing Platform of Action was both embraced by the Executive and the NGOs, not much information was made available on the real effectuation of these obligations and the outcomes of its subsequent reviews. I only encountered, based on the subsidy-contracts of the Women's Development Centre (SEDA), some indications of the execution of programmes and activities as mandated by the Platform for Action after 1995.

In conclusion, the developments related to women's rights and women's development in the former Netherlands Antilles and Curaçao experienced a very dynamic period. However, at the end of the 1990s, with the disappearance of women's organisations like UMA and the weakening of others like the Steering Committee Curaçao, most of the efforts diminished due to a lack of (financial) support from the Executive and society, a lack of solidarity among women and finally the opportunistic behaviour of some (successful) women. The socio-economic challenges which the island-territories faced in the late 1990s also negatively influenced the further liberation process of women. The impression exists now that not much emphasis is being put on the development of women in general, as incorrect gender-based stereotypes and perceptions on the emancipation of women and feminism persist within society, even among women, and also due to the fact that society is confronting many socio-cultural and economic challenges.

For many people the success of a group of women, particularly those in politics, and the mass participation of women in the labour and educational sectors are enough indication that Curaçaoan women are emancipated. As many women's organisations operate on an issue-oriented basis, they only direct their attention and activities to an issue when it presents itself, and not on the full development of women in all areas. Examples of this are the struggle against the legal incapacity of married women in the early 1970s, the struggle for the equal rights of (married) women in the labour sector during the late 1970s and the early 1980s, the issue of teenage pregnancies in the 1980s and currently the issue of domestic (gender-based) violence, due to its societal impact. This approach has led to the weakening of the movement and the process regarding the achievement of real advancement for all women in the Curaçaoan society.

Chapter 5

THE CONCEPTUAL FRAMEWORK FOR THE EFFECTUATION OF (WOMEN'S) HUMAN RIGHTS AT A LOCAL LEVEL

§ 5.1 Introduction

For the understanding of human rights law and the protection that human rights provide to women at country level, a framework guaranteeing the proper realisation of such rights should be present. As a State has the obligation to respect, protect and fulfil the fundamental rights and freedoms of individuals through the creation of effective policies and (legal) measures, mechanisms to guarantee these policies and measures have to be in place and effectuated. The principles, values and standards entrenched in (inter)national human rights law form the guidelines in which the national policy has to be embedded.

A national framework should begin with compliance with the State's obligations to realise human rights. First of all, its obligation to respect human rights upholds a refraining from interference with the enjoyment of human rights of individuals. The second obligation relates to the State's responsibility to take measures to ensure that third parties do not interfere with the enjoyment of human rights of others. Finally, we encounter the State's obligation to fulfil human rights which implies measures and steps that ought to be enacted and taken by its agencies for the implementation of fundamental rights of individuals.¹

I start therefore from the presumption that, for the realisation of human rights in Curaçao, the State must ensure the protection, promotion and fulfilment of these rights from a specific legal context and from a socio-political context which has been influenced by its colonial past.² Actually, complementary to the development and concretisation of the State's obligations, the human rights-based approach has been developed to stimulate the introduction of effective policies and programmes for the development of the most disadvantaged groups in society. This approach recognises the individual as rights-claimer and the State as duty-bearer in the realisation of the most fundamental rights and freedoms.

It is within this framework that this study attempts to provide answers to the obstacles regarding the position of local women which are incorporated in the (central) question and the sub-questions, starting from the two pillars of the investigation.

Subsequently, this chapter contains a possible framework for the realisation and fulfilment of women's rights and the further development of women at country level through the creation and implementation of a gender-sensitive policy driven by the human rights-

1 Baehr 2001, pp. 32-36; Nowak 2003, pp. 48-51.

2 For a contribution on the effects of this past on the development and position of Afro-descendants in Latin America and the Caribbean, see Reales 2012, pp. 87-95.

based approach to development which ought to be executed by governmental agencies and civil society, i.e. NGOs, at a local level.

Therefore, § 5.2 puts forward a comprehensive elaboration on the concept of the human rights approach to development. This part also contains a short analysis of the relationship between human rights and development. The human rights-based approach to development as a conceptual framework, its characteristics and effectuation is addressed in § 5.3. An exploration of the basic elements for the creation of a national human rights protection system, as a further expression of the accountability element stemming from the human rights-based approach, is presented in § 5.4. Institutions and actors involved in the protection of (women's) human rights and their possible contribution are identified. § 5.5 enhances preliminary remarks on the relevancy and possible contribution of the 'soft law' of the Committee. The last paragraph, which is § 5.6, sets out a matrix, starting from the elements of the human rights-based approach to development and the State's obligations as a possible reviewing framework for the realisation of women's rights at country level in accordance with international standards.

§ 5.2 Human rights law and the human rights-based approach

As was noted in Chapter 3, since the recognition of the universality, indivisibility, interdependence and interrelatedness of human rights in the Vienna Declaration and Programme of Action in 1993,³ the strict distinction between the generations of human rights has been lifted.⁴ This holds too for the Women's Convention, which contains both generations of human rights. Thus, all aspects of all obligations (positive and negative) of all human rights are relevant for their implementation at a local level.

Moreover, the treaty-based bodies have provided guidelines and tools for the amplification and interpretation of the provisions contained in the Conventions through their General recommendations and Concluding observations on State-reports which strengthen the protection provided to individuals. In the case of the Women's Convention, the case-law based on its Optional Protocol also gives additional information on the manner in which States should apply the obligations set out in the Convention in a particular case where a violation has allegedly occurred. In this sense, I assume that the 'soft law' of the Committee provides additional tools for the protection of women. Thus, these co-directives too have to be taken into account when determining a framework for the further development and protection of women at national level.

Article 3 Women's Convention forms the foundation for the State's obligation to further the development of women, and thus, for the effectuation of a human rights-based approach in the realisation of women's rights. Whether a State has utilised these tools in the application of the Women's Convention and the creation of a gender policy should be examined thus further. The general point of departure, though, is that the treaty-based protection mechanisms have to be supported by domestic policies and programmes directed at the development and advancement of individuals, including women, starting from the principles enshrined in human rights law, as just the existence of the treaty-based mechanisms on their own is not sufficient for the effective realisation of the most fundamental rights of

3 A/Conf. 157/23, part I, para. 5.

4 For an elaboration on this topic see Riedel 2012, pp. 133-143.

people. Realising this, the human rights-based approach to development cooperation since the 1990s has been stimulated, formulated and finally introduced by the United Nations.⁵

§ 5.3 Human rights-based approach as a framework

The human rights-based approach is a conceptual framework for the incorporation of human rights principles and standards in the development of policy and programmes in favour of the progress of vulnerable groups in a society. It connects, through its methods, the human rights framework and justice with development, which results in the creation of a sensitiveness to matters connected with power-relations, discrimination, insecurity and vulnerability.⁶ This is not surprising as human rights and development both share a preoccupation with the improvement of people's well-being and their progress.⁷

In 1997, in its 'Programme for Reform' the then UN Secretary-General requested all UN Agencies to incorporate the principles of human rights law in their development cooperation programmes, thereby effectuating the mainstreaming of human rights in their programming.⁸ Consequently, with the proclamation of Action 2 in the UN Secretary-General's report,⁹ the UN High Commissioner for Human Rights received the assignment 'to develop and implement a plan, in cooperation with the United Nations Development Group (UNDG) and the Executive Committee for Humanitarian Affairs (ECHA), to strengthen human rights-related United Nations actions at the country level'. A plan for Action 2 was drawn up in 2003 by these agencies, which afterwards was upheld by the Action 2 Global programme of 2004.¹⁰ The United Nations Development Group,¹¹ instituted in 1997 to improve the UN mission of development, since 2009 has been in charge of UN support for the integration of human rights standards at the domestic level, and thus of the supporting of the Action 2 programme.¹²

Furthermore, with the adoption of the UN Statement of Common Understanding on the Human Rights-based Approach to Development Cooperation at the Inter-Agency

5 Frankovits 2006, pp. 15-17.

6 Boesen & Martin 2007, pp. 6-9.

7 For a contribution on the early developments and effectuation of the (human) rights-based approach, see Jochnick & Garzon 2002; Office of the United Nations High Commissioner for Human Rights, FAQ on a human rights-based approach to development cooperation, United Nations, New York and Geneva 2006, p. 7, available on: www.ohchr.org/Documents/Publications/FAQen.pdf, last visited on 19 April 2015; Action 2 Plan of Action 'Strengthening human rights-related United Nations action at country level: National human rights promotion and protection systems 2004-2006', p. 4, available on www.un.org/events/action2/action2plan.pdf, last visited on 19 April 2015.

8 GA A/RES/52/12.

9 UN Doc. GA A/57/387.

10 The Action 2 Global Programme was compiled as a means of support for the implementation of Action 2. Action 2 Plan of Action 'Strengthening human rights-related United Nations action at country level: National human rights promotion and protection systems 2004-2006'; the Annual report 2006 of 'the Action 2 Global Programme: delivering on human rights as one', p. 4, was available on http://archive.undg.org/content/programming_reference_guide_%28undaf%29/un_country_programming_principles/human_rights-based_approach_to_development_programming_%28hrba%29, downloaded on 5 April 2014.

11 Action 2, which operated between 2004-2008, was the predecessor of the UN Development Group. Currently, a total of 32 UN funds, programmes, agencies, departments and offices are members of the UNDG. For a list of the members, see www.undg.org, last visited on 19 April 2015.

12 UNDG Human Rights Mainstreaming Mechanism (UNDG-HRM), Operational plan 2011-2013, November 2011, available on mdtf.undp.org/document/download/8302, last visited on 19 April 2015.

workshop in 2003, the UN Agencies complied finally with the request of the UN Secretary-General and they introduced the human rights approach to development within their programming.¹³ This rights-based approach¹⁴ replaced the hitherto valid need- and charity-based approach that had characterised the development programmes of the UN Agencies.¹⁵ The human rights-based approach has been one of the five¹⁶ core principles of the UN common country programming since 2007.¹⁷

Not surprisingly, in the early stages many of the agencies, such as UNICEF¹⁸, faced many challenges and obstacles with the mainstreaming of human rights principles in their activities.¹⁹ Nonetheless, the necessary progress on the incorporation and effectiveness of this approach within the development programming of the UN Agencies was achieved, despite a lack of uniformity in implementation among the agencies.²⁰ Consequently, several principles and guidelines with the aim of assisting (non)State actors in poverty reduction strategies were developed by the UN High Commissioner for Human Rights.²¹

§ 5.3.1 *Characteristics of the human rights-based approach*

In accordance with the human rights-based approach, the most vulnerable social groups within a society who are entitled to certain standards of well-being, are turned into beneficiaries and active rights-holders, whereas State-agencies simultaneously become duty-bearers for the realisation of human rights. The State-agencies are accountable for the fulfilment of the rights of the rights-holders as they have an obligation to respect, protect and fulfil those rights. The strengthening of the capacity of the duty-bearers and the empowering of the rights-holders should be the State's main goals.²²

The human rights-based approach identifies and perceives poverty, caused by factors such as discrimination, marginalisation and exploitation, as a major injustice and a violation

13 The UN Statement of Common Understanding on the human rights-based approach to development cooperation and programming, available on: www.hrbportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies, last visited on 19 April 2015; also available on www.undg.org.

14 The concept of a 'rights-based' approach has a broader meaning than 'human rights-based' approach. It does not only emphasise the integration of a legal framework into development, but also broad concepts such as justice and equity. The meaning of the concepts does not contradict each other however. Parra 2012, pp. 18-20.

15 Frankovits 2006, p. 37; www.unfpa.org/rights/approaches.htm, last visited on 19 April 2015.

16 The other four are: gender equality, environmental sustainability, capacity building and result-based management.

17 UNDG Human Rights Mainstreaming Mechanism (UNDG-HRM), Operational plan 2011-2013, November 2011, p. 7.

18 For a local assessment of the UNICEF based on this approach see the report on the situation of children in Curaçao of 2013. *'The situation of children and adolescents in Curaçao'*, United Nations Children's Funds (UNICEF) 2013, available on www.unicef.nl/wat-doet-unicef/kinderrechten-in-nl/koninkrijkskinderen/childrights/.

19 Jochnick & Garzon 2002, pp. 6-10; Frankovits 2006, pp. 36, 38.

20 Action 2 Plan of Action *'Strengthening human rights-related United Nations action at country level: national human rights promotion and protection systems 2004-2006'*.

21 Principles and Guidelines for a human rights-based approach to poverty reduction strategies (HR/PUB/06/12), available on www.ohchr.org/Documents/Publications/PovertyStrategiesen.pdf, last visited on 19 April 2015.

22 For an assessment of the view of the Netherlands on the effectuation of this approach see *'Een mensenrechtenbenadering van ontwikkelingssamenwerking'*, Advies Internationale Vraagstukken (AIV), no. 30, April 2003.

of human rights.²³ The ultimate objective of the human rights-based approach is therefore the improvement of the situation of impoverished and disadvantaged people starting from a holistic perspective of human rights. It offers a framework to address the problems of the poor and vulnerable, placed in the context of community, Government and international society.²⁴ In this way, both the significance of human rights law for the reduction of poverty, and also the relationship between human rights law and the achievement of the Millennium Development Goals of 2000, became evident.²⁵

The six principles²⁶ on which the human rights-based approach is founded, which are (1) universality and inalienability, (2) indivisibility, (3) interdependence and inter-relatedness of human rights, (4) participation and inclusion, (5) equality and non-discrimination and (6) accountability and rule of law, entail the obligation to translate human rights into effective practice by the State and non-State actors responsible for their realisation. In their guide for civil society on the application of the human rights-based approach, Boesen and Marten divided these principles into four areas where the focus must be put, which are (a) the most vulnerable groups in society, (b) the root causes of poverty, deprivation and human rights violations, (c) the relationship between rights-holder and duty-bearers and (d) the empowerment of human rights-based programming and development at the domestic level.²⁷

§ 5.3.2 *Effectuation of the human rights-based approach: the 'PANEL'-analysis*

In general, the realisation of a human rights-based approach to development programming requires a number of elements. These elements are: the assessment and analysis of the (social) context, the claims and the parties involved; the designing of the programming directed at the claims of the rights-holders and the obligations of the duty-bearers; the ensuring of the implementation, monitoring and evaluation of the programmes; and finally, the informing of the programming through the recommendations of human rights treaty bodies and mechanisms.²⁸

The human rights-based approach offers broad tools for responding to the issue of poverty and deprivation, with the objective being the transformation of society and the creation of social justice and universal human dignity within a society. As a rather new, progressive and transformative method it has to be adapted to the local circumstances, needs and capacities for an effective impact on societal development to be made. And so a pragmatic and sensible application of this approach is suggested.²⁹

For the effectuation of the human rights-based approach, any situational analysis should be based on the obligations of the State to the effective realisation of human rights. The outcome of this analysis supports the identification of the shortcomings and priorities

23 HR/PUB/06/12, paras. 21, 42-46.

24 Boesen & Martin 2007, pp. 9-13.

25 HR/PUB/06/12.

26 See the UN Statement of Common Understanding on human rights-based approach to development cooperation and programming. The International human rights network (IHR Network) mentions five principles. www.ihrnetwork.org/hr-based-approach_180.htm, last visited on 19 April 2015.

27 Boesen & Martin 2007, pp. 15-17.

28 The UN Statement of Common Understanding on human rights based approach to development cooperation and programming; Parra 2012, pp. 11-28.

29 Boesen & Martin 2007, p. 35.

in regard to the obligations of the State (agencies) and non-State actors and the procedural inadequacies in the realisation of human rights, such as lack of resources and appropriate priorities and financial means, as well as capacity gaps in the State institutions.

According to Frankovits a so-called Participation, Accountability, Non-discrimination, Empowerment and Linkage to human rights ('PANEL') analysis as a simplification³⁰ of the use of the human rights-based approach can be performed. The non-discrimination aspect should be the aspect which leads to changes and the accountability aspect should be the most critical one of this approach. In regards to the accountability aspect, it should be taken into account that it demands an examination of the capacity of the right-holders and the duty-bearers. The gender aspect should receive specific attention in this regard as well. The other three aspects are considered to be 'good for guidance'.³¹

For the proper understanding of the relevancy of each aspect, I give below short clarifying remarks, following the various sources³² on the approach.

1. Participation and inclusion

First of all, for the effectuation of the human rights-based approach, a high level of participation of all actors involved, including vulnerable social groups, is required. It must be ensured that rights-holders are active, informed and participating and contributing in a meaningful way in the enjoyment of their human rights and development. Accordingly, the accessibility of information, institutions and redress for their claims should be guaranteed.

2. Accountability

Under this heading lies the raising of the level of accountability in the development process of involved rights-holders and duty-bearers. It includes the identification of the claims of rights-holders and the obligations of the duty-bearers. The latter covers the positive and the negative obligations of governmental actors which should be considered at all times. So, compliance with legal norms and standards under international human rights instruments is imperative. In cases of violation or non-compliance, the rights-holders are entitled to bring procedures for appropriate redress before a court or adjudicator in accordance with the national legal system. Simply put, accountability implies that duty-bearers are made answerable for their actions or omissions with regard to their duties and obligations. Thus, the human rights-based approach takes account of the duties of all relevant actors, which includes individuals, States, local governmental agencies, institutions and authorities, private actors, aid donors and international institutions. There are in general four distinctive categories of accountability mechanisms,

30 Jochnick & Garzon suggested a similar approach. They made a division which contained six distinctive parts that included the empowerment of rights-holders, the building of government accountability and capacity, and the monitoring and evaluation of effectiveness of the human rights-based approach. Jochnick & Garzon 2002, pp. 10-13.

31 See Frankovits 2006, p. 54.

32 For relevant documents see www.hrbaportal.org; see also e.g. '*Een mensenrechtenbenadering van ontwikkelingssamenwerking*', Advies Internationale Vraagstukken (AIV), no. 30, April 2003, pp. 14-21; HR/PUB/06/12; Boesen & Martin 2007, p. 15; the UN Statement of Common Understanding on human rights based approach to development cooperation and programming, available at www.hrbaportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies; UNICEF Toolkit on Diversion and Alternatives to Detention 2009, Part B: 'Rights-based approaches' – UN Office of the High Commissioner on Human Rights.

compounding the essential elements of a national human rights-based protection system.³³ The categories are:

- judicial: this entails the judicial review of executive acts and omission;
- quasi-judicial: the possibility of scrutiny of ombudspersons and international treaty-based committees is of importance here;
- administrative: this includes the preparation, publication and scrutiny of human rights impact assessments;
- political: parliamentary processes that consider norms and standards of human rights law should also be considered.³⁴

3. Non-discrimination and equality

Non-discrimination and equality norms are essential. Particular attention is to be paid to the level of discrimination against and inequality among vulnerable groups. Accordingly, adequate legal instruments and policy measures directed at the protection of the equal rights of these groups should be enacted. These instruments should guard against reinforcing existing power imbalances between, for instance, men and women and workers and employers.

4. Empowerment

The approach starts from the view that preference should be given to strategies and programmes for the empowerment of vulnerable societal groups. As a matter of fact, attention is directed towards rights-holders as beneficiaries and the directors of development, with the objective of giving the rights-holders power, capacities, capability and assertiveness to realise positive changes and transformation in their lives and in society.

5. Linkage to human rights

Essential ingredients seem to be the creation of normative links to international, regional and national human rights instruments, together with the definition of objectives of development in terms of human rights, as legally enforceable entitlements. In this sense, the interrelation, indivisibility and interdependence of human rights is fundamentally important.

§ 5.3.2.1 Other relevant elements in short

In addition to the above mentioned main aspects, other relevant elements should be considered when applying a human rights-based approach. Firstly, the collection of disaggregated data is imperative to substantiate the many presumptions regarding the backwardness of specific groups in society. Situational analysis can sustain the identification of this data which is of utmost importance for the appreciation of the actual situation of vulnerable groups.

As regards a second element, the designing of programming directed at the claims of the rights-holders and the obligations of the duty-bearers, it can be noted that States have to identify the core problems first, when designing specific programmes and strategies directed at the increase of the capacity of the parties involved. Consequently, the programmes should be directed at resolving these problems and their causes. The third point that has to be

33 For the details on this national protection system, through which the accountability aspect is explained further, see § 5.4.

34 HR/PUB/06/12, para. 77.

contemplated is that the human rights-based approach requires the integration of realistic time frames, as the actors involved should be aware that, for the realisation of this approach, time is of the essence.

Cultural resistance and a lack of cooperation and willpower from civil servants and politicians also have to be taken into consideration. Hence, an awareness of and instruction about the human rights-based approach among governmental and non-governmental agencies, have to become some of the first objectives. Subsequently, the dialogue about the human rights-based approach between all the actors involved has to be effectuated. This is the fourth element that has to be considered. All governmental agencies should be encouraged to integrate human rights in their programmes and activities. This means the building of a culture of human rights in organisations and, subsequently, the allocation of resources for this awareness raising.³⁵

Identification of human rights violation and the introduction of practical activities addressing the violations, such as the establishment or the strengthening of human rights institutions, the adaptation of laws and policies, and the development of literacy and knowledge on the legal system, should be promoted as well.

Furthermore, as aforementioned, the participation of the right-holders and NGOs in the decision-making processes and development of programmes and activities that affect the realisation of their fundamental rights has to become an aim.³⁶ Because it is considered to be an important element, the implementation of programmes and activities should always keep human rights principles in view. These principles should be transformed and translated into practical standards for implementation. In this sense the participation of the right-holders should take place in a meaningful way and the role and contribution of duty-bearers ought to be taken into consideration. The main objective of the implementation of programmes is the strengthening of public participation and capacity. Thus, vulnerable groups have to participate in and benefit from the programmes that are offered.

Collaboration between the NGOs and other organisations has to be present for the accomplishment of the many goals and objectives, particularly when it concerns multi-faceted projects. The monitoring of the conduct of the parties involved, rights-holders and duty-bearers alike, is imperative. For the success of the projects regular periodic monitoring is required, both to ensure the incorporation of human rights norms in the programming and also to receive feedback from the participants. Lastly, the programmes have to be evaluated meaning that any improvement in the situation of the rights-holders should be measured. The end result leads to a situation where the right-holders are able afterwards to claim their rights more effectively and participate consciously in (political) processes and in the community.³⁷

§ 5.4 The creation of a national human rights protection system

For the effectuation of an effective human rights-based approach through development programmes, which can be seen as a tool of empowerment for vulnerable groups in society, the presence of a national human rights protection system is essential. Within such a system

35 Parra 2012, pp. 22-26.

36 Frankovits 2006, pp. 54-74; Boesen & Martin 2007, pp. 25-27.

37 Boesen & Martin 2007, pp. 29-33.

the main national actors accountable for the protection and fulfilment of human rights and their contribution have to be identified.³⁸ In short, through the existence of such protection system, the accountability aspect, which is considered to be the most critical aspect of the human rights-based approach, is further underlined. As stated in UN documents, a number of basic elements ought to be present for the creation of effective national human rights³⁹ based protection systems. These elements should include:

1. constitutional and legislative frameworks;
2. effective institutions to promote and protect human rights;
3. procedures and processes ensuring effective implementation of human rights;
4. programmes and policies for awareness-raising on human rights;
5. the existence of a civil society with equal participation of men and women.⁴⁰

The general elements for the creation of such a system for any State, including self-governing non-independent countries such as Curaçao,⁴¹ are explored below.

§ 5.4.1 *Constitutional and legislative frameworks*

The existence of a constitutional framework in which the most fundamental rights and freedoms of the inhabitants of a State are guaranteed is essential for a national human rights-based protection system. These rights and freedoms should firstly be ensured in the Constitution and the international human rights conventions to which the State is party. In case of negligence and violation of these rights there should be, especially in federal States, a higher entity in charge of supervising their protection.

Apart from the domestic legal framework, the additional protection offered by international human rights law is extremely important. Clarity concerning the (non)direct applicability of international human rights law in the domestic legal system is indispensable for this reason.⁴²

Whether or not rights and obligations enshrined in the international human rights conventions, including the Women's Convention, are valid in a State will affect the adequate or inadequate protection that is offered to citizens. A vital question is, however, whether for instance women can address the domestic judiciary or any other governmental agency for protection of their rights as set out in the Women's Convention in cases of alleged violations of or non-compliance with these rights. As the Women's Convention starts from a holistic approach in which both categories of human rights are incorporated, the issues of the indivisibility and the interdependence of these rights become more prominent.

38 Parra 2012, pp. 24-26.

39 In this context I utilise the broader concept of 'human rights', but women's rights also fall within the scope of this concept.

40 See e.g. the '(Concept) paper on National systems of human rights protection of May 2005'; available on: http://archive.undg.org/content/programming_reference_guide_%28undaf%29/un_country_programming_principles/human_rights-based_approach_to_development_programming_%28hrba%29; Action 2 Plan of Action 'Strengthening human rights-related United Nations action at country level: national human rights promotion and protection systems 2004-2006', pp. 4-6, available on www.un.org/events/action2/action2plan.pdf.

41 For a contribution to the significance of human rights protection regime for the empowerment of Afro-descendants in Latin America and the Caribbean, see Reales 2012, pp. 87-107.

42 Byrnes 2012, p. 541.

Thankfully, in many States, discrimination can partly be addressed through adequate national and international legal instruments, such as the Women's Convention. Therefore, the obligations set out in the Women's Convention ought to be fulfilled through the objective of the eradicating gender-based discrimination. Discrimination, i.e. unequal treatment, has also to be addressed through policies and (legal) measures directed at raising the level of awareness. This aspect is considered below in § 5.4.5.

§ 5.4.2 *Effective institutions to promote and protect human rights*

The point of departure is that all State agencies, which include the legislature, the Executive, the judiciary, independent human rights bodies and institutions as the main duty-bearers, have an obligation to respect and fulfil the most fundamental rights of all inhabitants, including women.⁴³ Governmental agencies, as the primary organs, should be equipped with sufficient resources and responsibilities for the execution of their many tasks in this field. The role and position of the other national State agencies, such as the legislature and the judiciary, and of international judicial and quasi-judicial organs are of utmost importance as well. Accordingly, a further discussion on the contribution and role of each institution follows below.

A. The Executive

To begin with, in the case of the Executive one has to examine the end point concerning the protection of vulnerable groups, such as women. The Executive, through its policy, has for instance an obligation to provide proper conditions for the further development of women, pursuant to Article 3 Women's Convention. Thus, the realisation of an effective gender-policy is actually mandated. Such a policy should be in place and properly delineated. Gender-mainstreaming, as the approach that entails the incorporation of a gender perspective into national policy, has to become part of general public life. It has to be made visible and effective. I thus set out from the position that without the incorporation of a gender perspective in national policy, no real progress can be made in the present or even be accomplished for women eventually. Furthermore, the Executive should have the insight, as the main duty-bearer, to supervise each draft of each law with regard to its gender-sensitiveness, meaning that laws have to be revised in accordance with the internationally stipulated gender-equality norms set out in the Women's Convention.

The challenges related to the execution of a cohesive gender policy remain connected to the priority attached to the matter by the Executive, the available financial means, the personnel capacity, the (small) scale of a territory and the available expertise on gender issues. Apart from these factors, one has also to take the continuity and complexity of the administration into account. Presumably, political reality partly determines the ability and capability to arrive at the successful culmination of political programmes and gender and development policy directed at the realisation of the human rights of the most vulnerable social groups in a society.

The point of departure remains, however, that an unstable political and governmental situation adversely affects the proper creation of an effective gender policy or the incorporation

43 In the case of women's rights this is mandated in Art. 24 Women's Convention.

of a gender perspective in national policy areas. Furthermore, the possible lack of financial means and personnel may jeopardise this as well. The possibilities for developing a gender policy based on human rights standards should therefore include instruments adapted to the socio-economic, cultural and historical realities of a particular country. The creation and implementation of human rights-aware procedures and practices by the Executive and its agencies should be realised, to ensure that the rights are not violated by abusive and discriminatory implementation of laws. This calls for the setting up of monitoring bodies and institutions. On the other hand, the contribution of other persons involved with the law can be taken into consideration,⁴⁴ and further comments are made about this in § 5.4.4 below, particularly considering the importance of this aspect for raising awareness.

B. National human rights institutions⁴⁵

Based on the Paris Principles of 1993⁴⁶, the United Nations reaffirmed that all States should set up a national human rights institution that operates independently from the branches of Government. Such an organisation has as its objective the protection and promotion of human rights. It should have the authority to submit, inter alia, reports and recommendations on any matters concerning the realisation of the most fundamental rights of people. Among its many tasks are the promotion of the harmonisation of national legislation and policies with international human rights law, the delivery of a contribution to the periodic reports which the State-Government has to submit to the United Nations bodies and committees, and the provision of assistance in the creation of programmes directed at the teaching of and research into human rights in the educational system.⁴⁷

Another possibility is the establishment of an ombudsperson who has the task of carrying out these obligations. A national human rights institution should consist of independent and diverse representatives from the social sectors involved in the promotion and protection of human rights. A framework for its operations is provided for in the Paris Principles. Above all, the most important factor is the incorporation of the possibility of setting up commissions with quasi-judicial authority to consider complaints of alleged violations of fundamental rights from victims, their representatives, or from any other organisations for that matter.⁴⁸ This was underlined by the Committee in 2008, in the case of women's rights.⁴⁹

C. The judiciary

The position of the judiciary in the national protection system is concerned with the following aspects. First of all, the presence of a (Constitutional) court at country level, which has the competence to review Acts of Parliament and Executive acts on international human rights law and the Constitution, is imperative. Thus, judicial review by such a court has to be guaranteed in constitutional law. Apart from the fact that Acts of Parliament and lesser regulations can be reviewed by reason of the fundamental rights and freedoms enshrined in

44 HR/PUB/06/12, paras. 24, 89.

45 For the importance of the creation of a National Human Rights Institution for strengthening the protection and awareness-raising of human rights law, see Boin 2012, pp. 159-178.

46 GA A/RES/48/134.

47 Boin 2012, p. 163-170.

48 GA A/RES/48/134 (Annex 6).

49 E/CN.6/2008/CRP.1 (Annex II).

the Constitution,⁵⁰ the review on (particular types) of international human rights law should offer better protection for citizens and non-citizens. Obviously, the review procedures do not function adequately in connection with the types of human rights that are violated or breached. In those cases, other accessible (administrative) procedures and mechanisms that offer redress to victims should be in place.⁵¹

Additionally, judicial review should also include the decisions of the Committee which oversees violations of the rights and freedoms set out in, inter alia, the Women's Convention as a quasi-judicial organ. The General recommendations and Concluding observations on the periodic report of a particular State, pursuant to Article 18 Women's Convention, and the case-law developed through the application of the Optional protocol, all serve to strengthen the domestic system.

D. The legislature

In regard to the contribution of the legislature, the following should be considered. In a national human rights protection system the legislature should have a statutory obligation to perform a 'human rights proofing' prior to the adoption of new legislation. This would mean that all new and existing laws are scrutinised for their conformity with (inter)national human rights standards and norms.

In addition, a so-called equality and gender-sensitive review, apart from the general human rights review, ought to take place prior to the adoption of any piece of legislation. Another possibility is related to the adoption of domestic laws by which the equal treatment of men and women in every area is guaranteed. The point of departure here should be that national laws are in conformity with the human rights norms and standards laid down in international human rights law.

In this regard the possible existence of national ordinances on equal treatment can be considered. The essence of such ordinances should be in conformity with, inter alia, the Constitution, national Acts on equal treatment, the international and regional equality norms such as, respectively, Article 26 ICCPR and Article 14 ECHR and regional equal treatment legislation. Additional protection can be offered through the adoption of equal treatment laws by the legislature. Moreover, Parliament, as part of the legislature, can apply its budgetary right to enforce and encourage the allocation of funds for the implementation of human rights norms in national policies and programmes. The creation of monitoring organ(s) by the legislature, i.e. Parliament, to supervise the implementation of human rights legislation by the Executive and other governmental agencies can be done as well.⁵²

50 In the case of Curaçao, see Art. 101 Constitution of Curaçao.

51 This accountability mechanism is mandated by the UN High Commissioner of Human Rights for the monitoring of a human rights-based approach to poverty reduction strategies. See HR/PUB/06/12, paras. 76-77; Consider also (Concept) Paper on National systems of human rights protection of May 2005, paras. 13c and 13d; and the UN Statement of Common Understanding on human rights-based approach to development cooperation and programming of 2003.

52 HR/PUB/06/12, para. 84.

§ 5.4.3 *Procedures and processes ensuring effective implementation of (women's) human rights*

The creation of procedures and processes to effectuate (women's) human rights is required. These procedures should be concerned to redress violations of and non-compliance with human rights. Effectively, this means firstly that domestic institutions, particularly the courts, should provide the first line of protection in cases of violation and abuse of fundamental rights; regardless of the fact that most human rights conventions do not mention this explicitly.

Secondly, cooperation with international and regional human rights mechanisms has to be established. Through the realisation of cooperation with international and regional human rights mechanisms (UN Agencies), a State demonstrates its willingness to achieve and fulfil the most basic rights of its inhabitants. In addition, entering into dialogue with treaty-based bodies and (inter)national human rights experts forms a part of this procedural element. The main goal here is to stimulate the creation of a partnership inside the country between branches of the Government and the other human rights actors such as NGOs on the one side and between the governmental agencies and international agencies on the other side.

Thirdly, the implementation of human rights-based policies and development programmes and projects has to be effectuated. This is crucial because by this means the translation of human rights principles and standards into practical policies through which governmental agencies and NGOs can act and operate in projects benefiting the general public or a specific societal group is ensured. This furthers the development of the whole community.

The incorporation of societal groups in participatory decision-making processes forms the last key component. The procedures should include the possibility of the participation of inhabitants and civil groupings in the formulation of laws, programmes and policies so that they can make a meaningful contribution to the realisation of the human rights of everyone and ownership is created by this means.⁵³

§ 5.4.4 *Programmes and policies for awareness-raising on (women's) human rights*

Human rights awareness and human rights education among a State's inhabitants has to be created and strengthened. This should be first and foremost accomplished through the (formal) educational system and through the mass media. It is generally recognised that an effective (women's) human rights protection system can only be developed and sustained through the entire educational system and programmes which include basic fundamental rights teaching and learning. In this regard, involved actors like teachers, professors, lawyers, public officers and social and development workers ought to be educated in (inter)national human rights law, especially in those norms and standards related to women's rights.⁵⁴

53 (Concept) Paper on National systems of human rights protection of May 2005, paras. 14a-14d, available on: [content/programming_reference_guide_28undaf29/un_country_programming_principles/human_rights-based_approach_to_development_programming_28hrba29](http://content.programming_reference_guide_28undaf29/un_country_programming_principles/human_rights-based_approach_to_development_programming_28hrba29), last visited on 19 April 2015; Boesen & Martin 2007, pp. 29-30.

54 Parra 2012, pp. 25-28.

The private sector should also engage in and promote respect for and fulfilment of (women's) human rights. The mass media and social media should have a prominent role in this as programmes on fundamental rights can reach most members of the public more easily through them. The creation and presentation of programmes by the Executive through the mass and social media, to bring the impact of gender stereotypes and stigma to the attention of the general public, should be incorporated in the protection system.⁵⁵ Thus, both the public and the private sectors have a responsibility in the raising of awareness among the general public about their rights. The main objective eventually should be the awareness of human rights generally and, in the case of women's rights, ultimately the elimination of wrongful gender stereotypes and fixed parental roles in society.

§ 5.4.5 *Non-governmental organisations (NGOs)*

The contribution of an independent and progressive civil society and NGOs is necessary for the fulfilment of the fundamental rights of human beings, including those of women.⁵⁶ In the case of women's rights, there has to be a community consisting of active women's rights defenders, committed to the cause of all women. This is certainly the case for the realisation of women's development as mandated in the Beijing Platform for Action among other things. The strengthening of NGOs in the use of international human rights law for the creation of stronger (legal and social) frameworks for gender equality is imperative. One can take the many (inter)national achievements and experiences of past decades by local women's movements as a point of departure. These achievements can function as directives and guidelines for the creation of gender-sensitive programmes and activities. The contribution of women's organisations and civil society to the (legal) liberation and emancipation of women achieved thus far, ought to be explicitly pointed out and utilised as guides.

The required changes in gender stereotypes and in fixed parental roles within a society for instance, can only be accomplished through programming, policies and law partly developed and executed by NGOs. The impediments affecting the further inclusion of women in socio-economic areas of society can be pointed to by civil society at the appropriate time. Effective legal instruments must be put in place by the State for the execution of independent monitoring by NGOs.

In many social areas leads are given by NGOs for the understanding of the impediments against the development and the further advancement of women. A strong collaboration among women's (rights) organisations and other human rights organisations is essential for the development of tools for the realisation of the fundamental rights of each group of women within a society. The objectives of this collaboration are the creation and implementation of tools like the voicing of societal concerns, the monitoring of governmental output from a human rights perspective and their role in the stimulation of accountability of the State, the

55 (Concept) Paper on National systems of human rights protection of May 2005, para. 16.

56 For some thoughts on the importance of the contribution of (human rights-based) NGOs at the domestic and international level, see Brett 2009, pp. 621-635.

public reporting of women's rights violations and abuses, and the stimulation of women's rights awareness and knowledge.⁵⁷

§ 5.5 Role and contribution of the Women's Convention and the 'soft law' of the Committee

The uniqueness of the Women's Convention is primarily expressed through Articles 2 (f) and 5 Women's Convention. Both provisions mandate the transformation of social and cultural patterns of conduct which impede the proper development of women and men. The General recommendations formulated by the Committee give indications for the proper and adequate interpretation and implementation of these legal provisions and of all the other (substantive) provisions enshrined in the Convention, such as Article 16 Women's Convention which ensures and protects the rights of women in the private sphere. In this regard it should also be noted that this provision is unique as it brings the private realm into the rights discourse, which is primarily considered as a part of the public sphere.

The relevant General recommendations⁵⁸ directed at specific issues and areas together with the Concluding observations on the periodic State-reports of a particular State, form the point of departure for the comprehension of the implications for the fulfilment of the obligations set out in the Women's Convention in the domestic legal system. The criteria developed by the Committee strengthen the framework from which the State and governmental agencies as duty bearers from above and the civil society as actors from below should set out. The suggestions and recommendations of the Committee help to define the line (context) for the creation of programmes, strategies and projects to further the advancement of women in a society.

§ 5.6 Conclusion

Through a 'PANEL' analysis stemming from the human rights principles, guidelines for the effectuation of women's rights at country level can be constructed. The human rights-based approach to development consists of the incorporation of human rights standards and principles in development policy and programmes for the advancement of weaker societal groups in the struggle against poverty, exclusion and backwardness. These principles, in correlation with the State obligations to respect, protect and fulfil the rights and freedoms of individuals enshrined in human rights conventions, provide a framework which should empower and support rights-holders (individuals) against duty-bearers (State and governmental agencies). This presumption forms the point of departure for the creation of a framework on which national State and governmental agencies should base their programmes, policies and laws for the effectuation, protection and promotion of the fundamental rights of women at the domestic level.

57 (Concept) Paper on National systems of human rights protection of May 2005, para. 16; HR/PUB/06/12, paras. 74, 86.

58 The Committee has adopted thus far a total of 30 general recommendations. The most recently adopted recommendation of October 2013 regards the position of women in conflict prevention, conflict and post-conflict situations (CEDAW/C/GC/30).

Subsequently, national instruments enhancing the strengthening of the position of women are reviewed against this framework. Based on this, I am able to conclude whether or not the objectives regarding the realisation of human rights and the empowerment of local women have really taken place.

In conclusion, from the elaboration given above on the essence of the human rights-based approach to development and the obligation towards the creation of an effective national human rights protection system at the domestic level directed at the realisation of women's (human) rights, all stemming from and complementary to the concretisation of the State's obligations, the following matrix can be presented:

	Obligation to Respect	Obligation to Protect	Obligation to Fulfil
Human rights-based approach principle			
Participation	recognise organisational structure of women's organisations (NGOs)	stimulate practices of women's organisations (NGOs) and insights on their output	introduce a national plan on gender and women's issues ensuring the participation of civil society in decision-making processes
Accountability	enforce gender-sensitive legislation	monitor and evaluate gender-sensitive programmes and policies	strengthen governmental capacity and that of citizens realise gender mainstreaming in national policy
Non-discrimination	enact anti-discrimination legislation on all relevant grounds	introduce mechanisms to identify and combat discriminatory acts	create equal opportunities by State and non-State actors for women
Empowerment	stimulate and enable women's and girls' involvement in activities	adopt accessible mechanisms to redress violations for women and girls	introduce women's (human) rights education and awareness
Linkage to human rights	stimulate visions and values on women's (human) rights	create mechanisms for the realisation of women's rights claims	cooperate with international and national mechanisms on gender and women's issues

Chapter 6

THE CONSTITUTIONAL FRAMEWORK AND INTERNATIONAL (HUMAN RIGHTS) LAW IN CURAÇAO

§ 6.1 Introduction

An effective constitutional framework is essential for the protection and realisation of fundamental rights and freedoms of individuals at a national level. These rights and freedoms should first of all be ensured in the Constitution of the State supplemented by those enshrined in international human rights law.

The means of effectuation of international human rights law at the domestic level is defined by the constitutional law of the State concerned. Hence, for the determination of the relationship between international and domestic law in Curaçao, I will look at its (un)written constitutional framework and the two general approaches which regulate this relationship. According to various sources¹ the applicable system in the Netherlands is the moderate monistic approach. Whether this theory is applicable in just the same way in Curaçao is explored. In general, I look into issues related to the constitutional framework for the effectuation of international law and the rights and freedoms ensured in conventions and for regulation at a local level that has been in force since 2010. The effectiveness of international (human rights) law, benefiting the citizens of Curaçao, is highly dependent on its enforcement in the domestic legal system. Moreover, through the understanding of the role of the main State actors involved in the conclusion and implementation of international human rights law at country level, the working of the national protection system becomes clearer. Aspects of the contribution of State-agencies at local and Kingdom level in the realisation of (women's) human rights, as laid down in the constitutional setting of Curaçao, are investigated here. Effectively, the accountability element under the human rights-based approach is examined.

In this chapter, internal aspects of the constitutional framework of Curaçao are described in § 6.2. In § 6.3 comments on the legal foundation of international (human rights) law in Curaçao are made. The contribution of State-agencies in the adoption of conventions and international agreements is included in this section. Thereafter, in § 6.4 an analysis of the approaches to the relationship between international (human rights) and domestic law in the Netherlands, is given. § 6.5 contains an elaboration on the legal grounds for the effectuation of international (human rights) law in the domestic legal system. A commentary on the obligation of Curaçao to keep a concordance in legislation with the Netherlands follows in § 6.6. The

1 See e.g. Sondaal 1986; Fleuren 2004; Kooijmans 2008; Burkens e.a. 2012; Kortmann/Bovend'Eert 2012; Van der Pot/ Elzinga, de Lange & Hoogers 2014.

supervisory power of the Kingdom and the limitations placed on the (legislative) self-governance of Curaçao by the Kingdom are discussed in § 6.7. Judicial review at the national level is examined in § 6.8. The recording and realisation of fundamental rights and freedoms in the Constitution of Curaçao and international conventions, and the safeguarding role of the Kingdom in all of this are explored in § 6.9. In § 6.10 shortcomings in the Kingdom's structure, which may (in)directly influence the realisation of international (human rights) law, are revealed. Issues related to the inequality in decision-making powers among the countries in the Kingdom, exposed through, inter alia, the new measures of 2010, are shortly commented on. The chapter concludes with my findings on the issues discussed.

§ 6.2 The constitutional settings of Curaçao within the Kingdom: internal aspects in short

An elaboration on the constitutional settings of Curaçao and on its workings gives an insight into the manner in which international human rights law is effectuated domestically. This framework comprises the most important governmental institutions, mechanisms of monitoring (checks and balances), rule of law and fundamental rights and freedoms. As strange as it may sound, the national constitutional framework of Curaçao does not only consist of its Constitution, but also the Charter and consensus-Kingdom's Act inter alia. Even the Constitution of the Netherlands contains essential provisions that qualify as part of the constitutional settings of this Caribbean island.² Accordingly, in this and following paragraphs the complexity of the Kingdom's structure, the position of Curaçao therein, and the connection between these instruments becomes evident.

§ 6.2.1 *The Kingdom's structure and the applicable constitutional instruments*

The Constitution of Curaçao presents a list of fundamental rights and freedoms, which have to be protected, respected and fulfilled by all national governmental agencies. In addition, at Kingdom's level a safeguard is created for the Kingdom to ensure their effectuation at the local level.³ As the highest constitutional instrument, the Charter contains the main objective to provide a legal framework for the constitutional structure of the Kingdom as established in 1954 and to delineate the common interests of the countries within the Kingdom which are enumerated in Article 3. That provision reads as follows:

1. Without prejudice to provisions elsewhere in the Charter, Kingdom's affairs shall include:
 - a. maintenance of the independence and the defence of the Kingdom;
 - b. foreign relations;
 - c. Netherlands nationality;
 - d. regulations of the order of chivalry, the flag and the coat of arms of the Kingdom;
 - e. regulations of the nationality of vessels and the standards required for the safety of navigation of seagoing vessels flying the flag of the Kingdom, with the exception of sailing ships;

2 Also the Cooperation Agreement uniform law of procedure Aruba, Curaçao and Sint Maarten forms part of this framework.

3 It concerns Art. 43 para. 2 Charter. For more details on the scope of this provision see § 6.9.1.

- f. supervision of the general rules governing the admission and expulsion of Netherlands nationals;
 - g. general conditions for the admission and expulsion of aliens;
 - h. extradition.
2. Other matter may be declared to be Kingdom's affairs in consultation. Article 55 shall apply *mutatis mutandis*.⁴

Within the Kingdom's structure, which could be characterised as quasi federal, each country is responsible for its internal affairs with the exception of those affairs which are defined as Kingdom's affairs. The Charter constitutes a voluntary association of the territories based on equality, for the promotion of common interests and mutual assistance; thus hereby the countries form a constitutional unity.⁵ The premise is that all matters which are not mentioned in the Charter as affairs of the Kingdom are matters left to the autonomous domain of the countries.⁶ The Charter provides, on the other hand, supervisory mechanisms, which give the Kingdom a more unitary character.⁷ So, not surprisingly, the complexity and weaknesses of the Charter as a constitutional instrument for this quasi federal State has been critically commented on by scholars,⁸ particularly after the restructuring in 2010, which has rendered more supervision possibilities to the Kingdom over the Caribbean countries, thus strengthening the unitary aspect. Wit puts it most strikingly:

One of the idiosyncrasies of our postcolonial arrangements with the Mother country is that we are living in our own constitutional fairy tale portraying ourselves as full members of one (almost) imaginary Kingdom, consisting of three separate but equal countries all sublimated into a constitutional Trinity the mysterious structure of which is enshrined in a document of quasi-sacred character: the Charter of the Kingdom. This 'one but three, three but one' construction, once, aptly I think, described by me as 'a paradigm of Dutch pragmatism, neither troubled by constitutional logic nor constitutional principles' has caused much havoc in our relation with The Netherlands as it has blurred our (and their) vision on the realities of our constitutional situation.⁹

In this complex structure, few State-organs operating at Kingdom's level, defined by the Charter, exist. Firstly, the Government of the Kingdom, being the main organ, comprises the King, the Ministers of the Netherlands and the Ministers Plenipotentiary¹⁰ of the Caribbean countries, pursuant to Article 2 paragraph 1 in conjunction with Article 7 Charter. The latter

4 This norm makes the transformation of internal affairs into Kingdom's affairs possible. The procedure for the adaptation of the Charter delineated in Art. 55 Charter has to be taken into account though. Van Helsdingen 1957, p. 262; Nap 2003, pp. 27-41.

5 Van Helsdingen 1955, pp. 182-185.

6 With the enactment of five consensus-Kingdom's Acts which regulate internal affairs of the Caribbean countries at the Kingdom's level, this premise has not been followed consistently. They resulted in more cooperation between the countries and (in)direct involvement of the Kingdom (read: the Netherlands) in the internal issues of these countries.

7 See e.g. Arts. 49-53 Charter.

8 See e.g. Van der Wal 2005; Wit 2007; Croes 2007; Kummeling 2007; De Jong 2009; Nehmelman 2009; Hoogers 2010 (a); Bense & Pronk 2010; Hoogers 2010 (b); Verheij 2010; Bovend'Eert 2011; Besselink 2011; Hillebrink 2011; Borman 2011; Borman 2012; Broekhuijse 2012 (b).

9 The reference to 'three' results from the fact that at that time the Kingdom consisted of three countries. Wit 2007, p. 206.

10 These Ministers are appointed civil servants representing their countries in The Hague, the Netherlands. They do not form part of the national Executives. Hillebrink 2008, pp. 143-155.

provision installs the Council of Ministers of the Kingdom which acts as the Executive at this level. It is the Ministers Plenipotentiary, appointed by their respective Governments, who look after the interests of the Caribbean countries in matters that fall under their autonomous competency. Secondly, we find the States-General of the Netherlands,¹¹ together with the Kingdom's Government, that is involved in the adoption of Kingdom's Acts. These two State-organs operate as the Kingdom's legislature. The parliaments of the Caribbean countries are only consulted and are permitted to give their views when the matters regard their interests, pursuant to Article 16 Charter. Input from these representative bodies takes place through their submission of written reports on legal measures that are intended to apply to their country, prior to the public debate by the House of Representatives. Adoption of lower regulations of the Kingdom, like Orders in Council of the Kingdom, falls under the powers of the Council of Ministers of the Kingdom.

All this means that there is a convergence of the constitutional organs of the Netherlands with those of the Kingdom. Accordingly, provisions of the Constitution of the Netherlands have the status of laws of the Kingdom, particularly those laws on the institution and powers of certain constitutional organs of the Netherlands, like the Council of State,¹² and on the relationship between domestic law and international law.¹³ Lastly, we encounter the Supreme Court of Justice of the Netherlands, which under Article 23 Charter has jurisdiction over legal disputes in the Caribbean countries pursuant to a Kingdom's Act.¹⁴ De facto, there exists an 'interweaving' of the Charter with the Constitution of the Netherlands which is very complex. Actually, the connection between these regulations was made and maintained from the point of view of efficiency.¹⁵ Despite this complexity, the original structure is, leaving aside the minor changes introduced over the course of time,¹⁶ still in force. I will therefore attempt to clarify parts of this complexity contained in the scope of international human rights law in the following paragraphs.

11 The States-General of the Netherlands comprises the '*Tweede Kamer*' (Second Chamber) and the '*Eerste Kamer*' (First Chamber). In the course of this study I use respectively the terms 'House of Representatives' and 'Senate' for these Dutch institutions.

12 This is the highest advisory board of the Kingdom. For details on its functioning and its contributions for the Kingdom and its advice on Kingdom's matters, see Borman 2009; Römer 2011.

13 It concerns Arts. 90-95 Constitution of the Netherlands. In 2009 a commission was set up by the Executive of the Netherlands to give advice on the revision of provisions of the Constitution of the Netherlands, including Arts. 90-95. For a critical analysis on the proposals, see Hoogers 2011 (b), pp. 364-380. For an elaboration on the position of Curaçao see § 6.5.

14 The Supreme Court acts as the Court of cassation with regard to civil and criminal cases and tax matters in the Caribbean countries. The Kingdom's Act on the Cassation Appeal of Aruba, Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba of 1961 (Stb. 1961, no. 212), that was partly enforced in 1965 (P.B. 1965, no. 19) and recently adapted by the Kingdom's Act of 7 September 2010 (Stb. 2010, no. 339), enforces this. For an elaboration on the history on the competency of the Supreme Court and its contribution to the Antillean, i.e. Curaçaoan, legal system, see Lewin 2009, pp. 31-38, 195-246; Seinen 2014.

15 The Charter is of higher ranking than the constitutional regulations of the countries, including the Constitution of the Netherlands, with the exception of the provisions of the Constitution of the Netherlands which, based on Art. 5 para. 1 Charter, are provisions applicable to the whole Kingdom. This stems from Art. 5 para. 2 Charter which mandates that the Constitution of the Netherlands has to take the provisions of the Charter into account. Until 1954 the Constitution of the Netherlands was the highest constitutional regulation for the Kingdom. See e.g. Van Helsdingen 1957, pp. 288-300; Hoogers & Nap 2004, pp. 55-57; Borman 2012, pp. 32-36.

16 Borman gives a short review of the adaptation of the Charter since 1954 due to constitutional reforms like the exit of Surinam from the Kingdom in 1975 and Aruba attaining country status in 1986. The most significant amendments came about with the reforms of 2010. Borman 2011, pp. 23-27; see also Hoogers 2010 (a); Hoogers 2010 (b); Borman 2012, pp. 41-42.

§ 6.3 The constitutional foundation of international law in Curaçao

Under the Charter the Kingdom is the sovereign State that participates in the international arena. Of the Kingdom's affairs¹⁷ Dutch citizenship, foreign relations and defence are the most critical ones.¹⁸ The point of departure in foreign relations is that the autonomous countries within the Kingdom are not permitted to participate independently at the international level. The adoption and conclusion of international conventions remains the responsibility and under the competency of the Kingdom.¹⁹ Although an international agreement is concluded by the Kingdom, its applicability can be confined to one or more countries. Yet, pursuant to Article 28 Charter the Caribbean countries are allowed to become members of international organisations in accordance with the international agreements concluded by the Kingdom.

Unlike the country of the Netherlands, the self-governing Caribbean countries are not permitted to pursue their own foreign policies independently though.²⁰ They have a limited degree of autonomy regarding their participation in the international arena. For the pursuit of their own international interests, particularly at a regional level, the collaboration of the Government of the Kingdom is required.²¹ As a matter of fact, the 'autonomy' which the Caribbean countries enjoy in regard to international agreements of an economic and financial nature is explicitly ensured in Articles 25 and 26 Charter. Firstly, Article 25 paragraph 1 Charter makes it possible for a country not to become bound by these specific agreements if its Government, 'indicating the reasons for considering that this would be detrimental to the Country', declares the country should not be so bound. Article 25 paragraph 2 provides for a norm that makes it possible for such agreements for a particular Caribbean country not to be terminated by the Kingdom. This is the case when the country concerned, when indicating the reasons, explicitly declares that the termination of the agreement should not be made on its behalf. However, if this position is incompatible with provisions enshrined in the international agreement, the Kingdom is obliged to terminate it for this country

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- 17 The Kingdom's affairs are not only set out in Art. 3, but also in Art. 5 para. 1, Art. 43 para. 2, Art. 44, Art. 50 and Art. 51 Charter. The last four provisions are supervision instruments at the disposal of the Kingdom to ensure fundamental rights, legal certainty, good governance, rule of law in the countries (read: in the Caribbean countries).
- 18 Van der Pot/Elzinga, de Lange & Hoogers 2014, pp. 995-1000; in a contribution on the substance of these affairs, Martha suggested the rethinking and restriction of Kingdom's affairs benefiting the autonomy of the Caribbean countries. Martha 2005, pp. 207-216.
- 19 The Government of the Kingdom of the Netherlands is the competent authority with regard to the foreign policy of the Kingdom, including the adoption (and termination) of conventions.
- 20 The lack of participation and involvement of Caribbean countries in the foreign policy of the Kingdom, particularly in the policy concerning international human rights law, is evident. The Kingdom's human rights policy is determined and defined by the (legal and social) realities and necessities and higher level of development of the Netherlands. See *'Respect and Justice for all'*, Ministry of Foreign Affairs, The Hague, August 2013; this is also apparent from the first Universal Periodic Review (UPR) to the Human Rights Council of 2008, and to a lesser extent from the second report of 2012 of the Netherlands (i.e. Kingdom) in regard to the level of compliance with the obligation to implement human rights conventions by the Kingdom. See A/HRC/WG.6/1/NLD/1 (2008); A/HRC/WG.6/13/NLD/1 (2012).
- 21 According to Martha, the Kingdom's Government officially recognized in 1987 the more autonomous position of the Caribbean countries in foreign relations. Yet, it was the struggle for more autonomy in foreign relations by the former Netherlands Antilles in the late 1990s, following the intentions at that time of the Kingdom (i.e. the Netherlands) on the full incorporation of the Antillean Department of Foreign Relations (BBB) in the Dutch Ministry of Foreign Relations, which granted the country more autonomy in foreign relations and policy on regional level since 2002. See e.g. Martha 2005, pp. 212-214; Prens 2005, pp. 281-283; see also Nap 2003, pp. 31-32, 94; Borman 2012, pp. 139, 142.

anyway. As far as Article 26 Charter goes, it ensures the autonomy of a Caribbean country when it concerns the conclusion of these international agreements that will only apply to it. In those cases the Kingdom has an obligation to provide the necessary assistance, as long as the agreements do not conflict with the position of the Caribbean countries within the Kingdom.

In spite of the fact that Curaçao cannot independently be a member of most²² international organisations, such as the United Nations, it can have an observer status or associate membership in several regional organisations, such as the Caribbean Community (Caricom) and the UN Economic Commission of Latin America and the Caribbean (UN ECLAC). As a matter of fact, in 2013 it was negotiating its status of associate member in the Caricom, of which a positive outcome is expected in the near future. And it is already an associate member of the UN ECLAC²³ and of UNESCO since 2011.²⁴

The Charter, together with specific provisions of the Constitution of the Netherlands²⁵ and the Kingdom's Act on the Approval and Publication of Treaties of 1994,²⁶ regulates the procedures regarding the adoption and termination of international agreements. Foreign relations, in accordance with Article 3 paragraph 1 sub b Charter, under which the contracting of international agreements resides, are effectively carried out by the Government of the Kingdom.²⁷ The input of the Caribbean countries in the foreign policy of the Kingdom takes place through the institutions and procedures which are created for the promotion of the affairs of the Kingdom.²⁸ When the interests of the Caribbean countries are involved, the Ministers plenipotentiary of the respective countries participate in the deliberations as members of the Council of Ministers of the Kingdom.²⁹

22 Exceptions are international organisations which, by their Statutes, make it possible for non-independent territories with a certain degree of governmental autonomy to become members. As a consequence of this, since 1875 the former Netherlands Antilles had been, and since 2010 Curaçao Aruba and Sint Maarten are, members of the Universal Post Union (UPU). See www.upu.int, last visited on 15 April 2015. This was also the case for membership of the World Meteorological Organisation (WMO) since 1951. Currently, Curaçao and Sint Maarten are members. See www.wmo.int, last visited on 15 April 2015. Van Rijn 1999, pp. 122-125.

23 The former Netherlands Antilles had observer status in the CARICOM since 1993; visit www.caricom.org. It was also an associate member of the UN ECLAC since 1981. For an elaboration on the then future position of Curaçao in these organisations, see van Rijn 2010, pp. 105-108; in the meanwhile Curaçao has become an associate member of the latter organisation. See www.cepal.org, last visited on 19 April 2015. Information confirmed by Mrs M Racamy of the Directorate of Foreign Relations on 17 December 2013.

24 See www.unesco.org/new/en/unesco/worldwide/latin-america-and-the-caribbean/curacao/.

25 Article 5 para. 1 Charter prescribes that in the exercise of royal and legislative power in the Kingdom's affairs, if not provided for by the Charter, the Constitution of the Netherlands applies. Arts. 90-96 Constitution of the Netherlands are hereby transformed into Kingdom's regulations. Scholars like Borman, Nap, Van Rijn and Rogier have acknowledged and underlined this legal construction for the Netherlands Antilles. See e.g. Van Rijn 2004 (a); Borman 2012; Nap 2003; Rogier 2012.

26 Stb. 1994, no. 542, as recently adapted by Stb. 2010, no. 339.

27 Articles. 15-19 Charter.

28 For the procedures see section 2 of the Charter, particularly Art. 27 Charter.

29 Consider e.g. Art. 7 in conjunction with Arts. 10 and 17 Charter; Kortmann 2012, pp. 98-102; Nap 2003, pp. 72-84; Borman 2012, pp. 92-95.

§ 6.3.1 *The participation of Curaçao in foreign relations*³⁰

The participation of the Government of Curaçao³¹ in the foreign relations of the Kingdom is divided into two categories. The first category concerns its participation in general foreign policy that may affect its autonomous fields of interest³² and the second category regards its involvement in the concluding of (financial and economic) conventions for the country.³³ First of all, the premise, under Article 11 paragraph 3 Charter, is that Curaçao is involved in foreign relations ‘(...) whenever the particular interests of Aruba, Curaçao and Sint Maarten are involved or whenever arrangements are contemplated which may have significant consequences for such interests.’ Being the agency in charge of the coordination of the autonomous interests of the island in the Kingdom’s foreign policy, the Directorate of Foreign Relations (DBB) of Curaçao³⁴ therefore maintains close cooperation and communication with the Kingdom’s (i.e. Dutch) Ministry of foreign relations.³⁵

In the case where an international arrangement or agreement is to the disadvantage of the interests of Curaçao, the country may invoke its right of veto, through its Ministers plenipotentiary under Article 12 paragraph 1 Charter, so that the particular arrangement is not binding on Curaçao. However, the proposed instrument or arrangement will apply nonetheless if the position taken by the country conflicts with its ties within the Kingdom.³⁶ Serious objections of the Caribbean countries resulting in a deadlock are resolved through the mechanism enshrined in paragraphs 2 to 4 of Article 12 Charter. The ineffectiveness of this mechanism for the interpretation of provisions like Article 25 Charter, leading to sentiments of frustration among the Caribbean countries, became evident in the *Rijst & Suiker* affair of 1997.³⁷

The second type of involvement by Curaçao in the foreign policy of the Kingdom relates to its participation in the conclusion of international agreements. Hence, this is the only aspect of the Kingdom’s foreign policy that is explicitly regulated in the Charter. The provision under Article 27 paragraph 1 Charter forms the general point of departure which secures the island’s involvement in the preparation and conclusion of agreements by the Kingdom with other States. It stipulates that the countries ought to be ‘consulted in preparation of agreements with other Powers which affect either of them’ following Article 11 Charter. The Governments of the Caribbean countries are involved in the implementation of the obligations under the conventions at the national level. Furthermore, as already noted, Articles 25 and 26 Charter give Curaçao the right to take the initiative to engage

30 Foreign policy also includes diplomacy, the promotion of the interests of the State abroad, the participation of a state in international organisations etc. Martha 1999, p. 46.

31 This elaboration applies to a great extent to the self-governing countries Aruba and Sint Maarten as well.

32 Article 10 in conjunction with Art. 11 para. 3 Charter.

33 Articles 25 and 26 Charter.

34 Since 10 October 2010 Curaçao has had its own Directorate of Foreign Relations (Directie Buitenlandse Betrekkingen (DBB)). For a short contribution on the background of this department see Prens 2005, pp. 279-284.

35 Borman 2012, p. 138.

36 Article 12 para. 1 Charter reads: ‘If the Minister Plenipotentiary of either the Netherlands Antilles or Aruba, indicating his reasons for expecting that a proposed instrument containing generally binding rules would be seriously detrimental to his Country, has declared that his Country could not be bound by such an instrument, the instrument may not be adopted in such a way as to apply to the Country concerned, unless such a course would be inconsistent with the Country’s ties with the Kingdom.’ See Van Helsdingen 1955, pp. 185-189; Borman 2012, pp. 97-99.

37 For more details on this affair see § 6.10.2.

‘independently’ at the international level and develop its ‘own’ position and foreign policy, when it concerns issues³⁸ that are considered to be its internal, financial and economic interests, with the condition of consent from the Government of the Kingdom and that the matter is agreed upon under the responsibility of the Kingdom. This is particularly the case for the contents and the application of these conventions. The implication of this regime brings with it, however, that this ‘autonomy’ of the Caribbean countries only applies under the strict condition that the adoption and conclusion of (financial and economic) international agreements may not under any circumstances be in conflict with the countries’ position within the Kingdom. This approach also applies for other conventions.³⁹

Considering the specific objective and nature of human rights conventions, the Kingdom upholds the approach which starts from the premise that these conventions are binding and applicable in the entire realm.⁴⁰ Moreover, Article 29 Vienna Convention stipulates that unless a (human rights) convention intends otherwise, it is binding for the entire territory of the State-party concerned. In the case of the Kingdom, this State-party is ultimately responsible for the fulfilment of the concluded human rights conventions.⁴¹ If a country within the Kingdom does not wish to be committed to a particular international (human rights) agreement though, it may officially request a restriction on the application of the convention or a restriction on the application of specific provisions of the convention pursuant to Article 19 Vienna Convention.

§ 6.3.1.1 New arrangements under Article 27 Charter

Since 2010 new provisions on the preparation and execution of international agreements at country level have been enacted in the Charter. Besides the general involvement of the Caribbean countries in the preparation process, and subsequently in the execution of the agreements, when it concerned agreements which affect their interests, Article 27 Charter now also entails new mechanisms about the implementation of conventions at national level. Van Rijn stated in 2010 that these measures were necessary, as defective ‘timely completion of the legislation and administrative measures required to implement a treaty is already creating a particular problem in terms of compliance with the treaties affecting the Netherlands Antilles’. The liability of the Kingdom at the international level and the burden of the effectuation of international obligations at the national level for the new smaller country of Curaçao (Aruba and Sint Maarten) demanded the enactment of these provisions.⁴²

Consequently, Article 27 paragraph 2 Charter contains an obligation for cooperation and information on the (status of the) enactment of legislation or other measures for the

38 The regime of these articles refers to the possible adoption, implementation and termination of financial and economic international agreements for the Caribbean countries. They have a right of veto under Art. 25 para. 1 Charter; an instrument with which they can autonomously determine whether specific international agreements apply for them or not. The regime of these provisions has, however, been applied for all types of conventions which the Kingdom is intending to adopt with implications or consequences for Curaçao. Van Rijn 1999, pp. 110-118; Kortmann 2005, pp. 189-190.

39 Borman 2012, p. 142.

40 Van Rijn 1999, p. 114.

41 Art. 43 para. 1 Charter prescribes the effectuation of human rights by each country. Para. 2 of Art. 43 Charter provides that the supervision for the effectuation of these rights in the Caribbean countries is to be performed by the Kingdom.

42 Van Rijn 2010 (a), p. 104.

execution of obligations under conventions between the countries within the Kingdom through the introduction of a mutual agreement,⁴³ pursuant to Article 38 paragraph 1 Charter.⁴⁴ The objective of this provision is for the countries to engage at an early stage in informing their partners within the Kingdom on the degree of realisation of international obligations at national level, so that, in cases of delay or non-compliance when the interests of the Kingdom are effected thereby, the Kingdom can remedy the situation by imposing Kingdom's measures on the countries until they comply diligently with their obligations.⁴⁵ Effectively, the Mutual Agreement on the cooperation between the countries in the Implementation of Treaties of 2010, which is the elaboration of the new obligations under Article 27 Charter, regulates the procedures at the Kingdom's level. It provides that in cases where a future convention requires for its ratification by the State the enactment of implementation measures at national level, the countries within the Kingdom are obliged to draw up an implementation plan. This plan includes information on the domestic measures taken prior to the ratification of the convention, the term of their completion, whether the effectuation of the substantive obligations under the convention has financial consequences for the country and whether there exists a reporting obligation.⁴⁶ Moreover, in Article 5 of this Mutual Agreement it is agreed that each country provides, when requested, information on the way it intends to implement a convention. The possibility of assistance for the execution of the implementation plan is created. The country concerned can approach one partner within the Kingdom for this purpose. Only in exceptional cases, such as the unavailability of support facilities, can this request for assistance be denied by the approached partner.⁴⁷ In the case that all the approached countries (read: the Caribbean countries) deny assistance based on the grounds for refusal under Article 5 paragraph 4, and the requesting country (read: the Netherlands) is herewith not able to comply in time with the execution of the implementation plan, the Council of Ministers of the Kingdom, when considering the introduction of a supervisory measure under Article 27 paragraph 3 Charter, has to take these grounds into consideration.⁴⁸ Worthy of note is the norm under Article 6 of this Mutual Agreement which introduces a measure that in its essence contradicts the structure and spirit of the Charter. Under this provision the Dutch Minister of Internal Affairs and Kingdom Relations has consultation and supervision powers over the other countries, when they are making insufficient progress with the execution of the implementation plan and the imposition of a Kingdom's Order in Council is being contemplated. Thus, not the Kingdom's

43 The Mutual Agreement on the cooperation between the countries in the Implementation of Treaties is enacted in 2010 (Strc. 2010. no. 19006) (hereafter: the Mutual Agreement on the cooperation in the Implementation of Treaties of 2010); Art. 60c Charter.

44 For the formulation of this norm see § 6.10.

45 Van Rijn 2010 (a), p. 105; Van der Pot/ Elzinga, de Lange & Hoogers 2014, p. 998; Explanatory Memorandum of the Mutual Agreement on the cooperation in the Implementation of Treaties 2010.

46 Article 1 in conjunction with Art. 2 Mutual Agreement on the cooperation in the Implementation of Treaties 2010; Explanatory Memorandum of the Mutual Agreement on the cooperation in the Implementation of Treaties 2010, pp. 4-6.

47 Article 5 para. 2 in conjunction with Art. 5 para. 4 Mutual Agreement on the cooperation in the Implementation of Treaties 2010.

48 Article 5 para. 6 Mutual Agreement on the cooperation in the Implementation of Treaties 2010.

Executive, but one of the partners, through its State-agency, is now in charge of supervising its other 'equal' partners.⁴⁹

In sum, Article 27 paragraph 3 Charter⁵⁰ forms the legal ground for the imposing of Kingdom's measures in cases of non-compliance with the obligations under Article 27 paragraph 2 Charter and the Mutual Agreement on the cooperation in the Implementation of Treaties 2010. The provision provides that when the interests of the Kingdom are affected by a lack of action by one of the countries, and the ratification of the agreement is endangered by it, the manner in which the execution of the agreements will take place at national level is determined through the enactment of an Order in Council for the Kingdom or a Kingdom's Act. Effectively, the Kingdom now has the power to act on an omission by Curaçao through this supervision instrument. Paragraph 4 of Article 27 Charter regulates the withdrawal of the measure after the introduction of the required domestic (legal) measures.

The partners within the Kingdom agreed in 2010 that the effectiveness of this mutual agreement, which has a permanent basis, will be evaluated in 2015.⁵¹ According to van Rijn, through the enactment of these new rules the Kingdom finally assumed its responsibility towards the realisation of international (human rights) law.⁵² It remains, however, to be seen whether the Kingdom is really ready for assuming its accountability for the realisation of human rights law in the Caribbean countries herewith, as the construct only applies for new conventions and not for the international agreements which have already been adopted. It appears that the adoption of these arrangements was actually induced by pressure put upon the Kingdom at the international level to ensure proper effectuation of conventions at the national level, when one takes into consideration the remarks of the Council of State of the Kingdom in its subsequent recommendations on the international obligations of the Kingdom, and the call upon the Kingdom expressed by treaty-bodies to implement its obligations under the respective conventions effectively.⁵³

In the opinion of Borman the new arrangements under Article 27 Charter can be seen as the tightening up of the supervision mechanism under Article 51 Charter in the case of the implementation of conventions.⁵⁴ Furthermore, according to Hoogers, the discussion concerning the independent authority of the Kingdom under Article 3 paragraph 1 sub b Charter in the implementation of international obligations at local level was finally settled in 2010 with the enactment of Article 27 paragraph 2 Charter. The realisation of international

49 Hoogers denominates as '*een misslag*' (an error) the fact that a Kingdom's power is assigned to a national organ of the Netherlands. Hoogers 2011 (c), p. 89.

50 Its elaboration is enshrined in Art. 6 Mutual Agreement on the cooperation in the Implementation of Treaties 2010.

51 The assessment is to be performed by the '*Triepartiet Wetgevingsoverleg Koninkrijksrelaties (ATWOK)*' instituted by (Art. 2 para. G) the Mutual Agreement on the Official Legislative Consultation on Kingdom's Affairs (Str. 2013, no. 2376); Art. 7 Mutual Agreement on the cooperation in the Implementation of Treaties 2010; Explanatory Memorandum of the Mutual Agreement on the cooperation in the Implementation of Treaties 2010, p. 7.

52 Van Rijn 2010, p. 105; Hoogers in his turn applauded the expansion of this provision. According to him the rulings brought clarity to the supposedly independent authority of the Kingdom under Art. 3 para. 1 sub b Charter in the realisation of international obligations in the Caribbean countries. Hoogers 2010 (a), pp. 262-263.

53 See '*Raad van State van het Koninkrijk, Voorlichting inzake 50 jaar Raad van State voor het Koninkrijk, 10 december 2004, W04.04.0425/I/K*', paras. 2, 4; '*Raad van State van het Koninkrijk, Voorlichting overeenkomstig artikel 18, tweede lid, van de Wet op de Raad van State inzake de hervorming van de staatkundige verhoudingen van de Antilliaanse eilanden binnen het Koninkrijk, 10 december 2006, W04.06.0204/I/K/A*', paras. c, 4.2.

54 Borman 2011, p. 27.

agreements at domestic level is an internal affair, albeit the supervision mechanism in cases of non-compliance with international obligations by the countries is to be found at the disposal of the Kingdom, pursuant to Article 27 paragraph 3 Charter.⁵⁵

§ 6.3.2 *The procedure for the adoption (conclusion) of (human rights) conventions*

Generally, States will only become bound by an international agreement when the national procedures for this purpose have been fulfilled. In most States these procedures require the approval by the legislature through an Act of Parliament.⁵⁶ For the Kingdom the procedure for the ratification of a convention is governed by the Vienna Convention on the Law of Treaties,⁵⁷ the Charter, the Constitution of the Netherlands⁵⁸ and the Kingdom's Act on the Approval and Publication of Treaties.⁵⁹ Article 91 Constitution of the Netherlands does not allow the Kingdom to be bound by or to terminate an international agreement without the consent of the States-General, except in a limited number of cases.⁶⁰ When a convention includes provisions which are in dispute with the Constitution of the Netherlands, the explicit approval of a majority of two-thirds of the House of Representatives and the Senate in an Act of Parliament is required, pursuant to Article 91 paragraph 3 Constitution of the Netherlands. The States-General has full competency in this matter.⁶¹ Thus, international agreements including provisions that are in conflict with the Dutch Constitution may be agreed upon as long as this procedure is followed. The point of departure in the Dutch (i.e. Kingdom's) constitutional system remains that conventions have precedence over the Dutch Constitution as they are of higher ranking.

Nap and Hoogers argued that the procedure under Article 91 paragraph 3 Constitution of the Netherlands is only applicable when a convention is in conflict with the Constitution of the Netherlands, and not when it is in conflict with the Charter. This is based on the fact that the Charter does not regulate this matter.⁶² The legal hiatus in regard to the Charter is also

55 Hoogers 2010 (a), p. 263.

56 Malanczuk 1997, pp. 64-71, 130-134.

57 This convention was ratified by the Kingdom in 1985 and it contains the international regulations on the adoption and coming into force of international agreements between State-parties. Trb. 1977, no. 169; Trb. 1985, no. 79.

58 Article 24 Charter and Art. 91 Constitution of the Netherlands. These two provisions regulate the national approval of international agreements by the States-General. The difference between these provisions lies in the fact that Art. 24 Charter upholds the explicit participation of the Parliaments of the Caribbean countries in the realisation of an international agreement, whereas Art. 91 Constitution of the Netherlands only regards the competence of the States-General.

59 This Kingdom's Act upholds the specific procedures in regard to the approval and publication of conventions. Its ground is to be found in Arts. 91 and 95 Constitution of the Netherlands. Stb. 1994, no. 542, as most recently adapted by Stb. 2010, no. 339.

60 Conventions contain a ratification clause which addresses the binding force of the conventions after the approval by the Parliament. Otherwise, they will obtain binding force just after the signing by the Government of the Kingdom. See e.g. Besselink 1995, pp. 32-39; Burkens e.a. 2012, pp. 356-361; Kortmann 2012, pp. 160-164.

61 See also Art. 6 Kingdom's Act Approval and Publication of Treaties; Art. 91 para. 3 Constitution of the Netherlands. The proposals of the Commission on the revision of the Dutch Constitution Art. 91 upheld *inter alia* an absolute prohibition on the ratification of conventions which contradict the essence of the Dutch Constitution. This essence would be laid down in a general provision on Dutch democracy based on the rule of law, fundamental rights etc. The Constitutions of the Caribbean countries were not considered at all in this sense. For the constitutional shortcomings and the consequences of this proposal for particularly the Caribbean countries, see Hoogers 2011 (b), pp. 368-370.

62 Hoogers & Nap 2004, pp. 53-86; see also Kortmann 2012, pp. 164-167.

underlined and discussed by Van Rijn.⁶³ The solution for this ‘gap’ lies in the modification of the Charter, so that it can be in conformity with a convention.⁶⁴ Borman suggests in addition the ratification of such a convention under the reservation that the Kingdom cannot be bound by it prior to the adaptation of the Charter. This adaptation can be achieved through the incorporation of a norm modelling Article 91 paragraph 3 Constitution of the Netherlands in the Charter. According to this author the position that the procedure under Article 91 Constitution of the Netherlands is Kingdom’s law based on Article 5 paragraph 1 Charter, and thus also applicable for conventions in conflict with the Charter, is not correct. Article 91 Constitution of the Netherlands is Kingdom’s law under Article 3 paragraph 1 sub b Charter. Even if one considers it Kingdom’s law, Article 91 paragraph 3 Constitution of the Netherlands only refers to the Dutch Constitution and not to the Charter.⁶⁵

The limited involvement of the Caribbean countries in the explicit approval of conventions that affect their interests is safeguarded by their respective Minister plenipotentiary, who effectively is exercising an authority belonging to the Parliaments.⁶⁶ The participation of the Parliament of Curaçao in the adoption process is guaranteed through Article 24 Charter and Article 13 Kingdom’s Act Approval and Publication of Treaties. These provisions specifically regulate the obligation of the Government of the Kingdom to simultaneously present the international agreement to the Curaçaoan Parliament, when the agreement includes matters which are of importance for the country.⁶⁷ The approval of a convention is laid down in a Kingdom’s Act, pursuant to Article 14 Charter. In cases where the international agreement contains matters which only concern the Netherlands, the sole involvement of the States-General is sufficient. The agreement is then addressed as an internal affair of the Netherlands instead of an affair of the Kingdom, which means that the convention is approved and concluded through a Dutch Act of Parliament.⁶⁸ In my opinion, following Borman, an equivalent construct for the conclusion of a convention only applicable to Curaçao by its Parliament as the legitimate State-organ would have mitigated some of the deficiencies in the Kingdom’s construct in this regard. Furthermore, the deficiency in this system is also exhibited through the fact that the Parliaments of the Caribbean countries are only permitted to present written reports on the convention prior to the debate in the States-General, pursuant to Article 16 Charter. They do not have any decision-making powers in this respect.⁶⁹

63 Van Rijn 2004 (a), pp. 87-107.

64 Nap 2003, p. 93.

65 Borman 2012, p. 140; for an elaboration on the differences in the regimes of Arts. 3 and 5 Charter see § 6.4.

66 Article 24 Charter and Art. 5 Kingdom’s Act Approval and Publication of Treaties; Borman 2012, p. 144.

67 These provisions uphold the statutory consultation with the Parliaments of the Caribbean countries, in the case where the international agreement contains regulations that affect them. Nap 2003, pp. 98-99.

68 Article 14 para. 3 Charter; Hoogers disputes this legal construct and approach, as in his opinion the adoption of conventions is a Kingdom’s matter. Although the convention might be only applicable in the Netherlands, it should be implemented by the Kingdom through a Kingdom’s Act. Hoogers (b) 2010, p. 396; Borman puts forward another view on this matter. He sees no necessity for the involvement of the Caribbean countries in these enactment procedures whatsoever. The submission of the documents and information to the Parliaments of the Caribbean countries is just a formality to inform them of the adoption of the convention by the Netherlands. Borman 2012, p. 145.

69 Borman 2012, p. 144.

After the signing (or the conclusion) of international agreements by the Government of the Kingdom, modifications are excluded.⁷⁰ Amendments are possible through reservations to the convention for the Kingdom or for a specific country within the Kingdom. This implies that the Kingdom as a party to a convention accepts the agreement, but it makes explicit objections to the binding force of specific provisions of the convention in the sense that it does not wish to be bound by those provisions. Overall, reservations are only allowed when they are not forbidden by the convention and when they are not in conflict with the objectives and the purpose of the convention itself.⁷¹ The other parties to the convention have to agree with the reservations; with the exception of those cases where the convention explicitly allows reservation by States. Consequently, State-parties can come to different conclusions on the compatibility of the reservations.⁷²

§ 6.4 Approaches to the relationship between international (human rights) law and domestic law: the direct applicability aspect

The relationship between the domestic law of a State and international (human rights) law is determined by the constitutional system of that particular State. There are two approaches for defining this relationship.⁷³ However, it is currently accepted that these approaches co-exist in correlation with each other and that several methods apply to the implementation of international (human rights) law in the domestic legal system. The general point of departure is that the obligations enshrined in the conventions have to be implemented effectively.⁷⁴

As the Curaçaoan constitutional system stems from the Dutch system, the latter system applies to it. The relationship between domestic and international law in the Netherlands, i.e. the Kingdom, is governed by the adoption theory, i.e. the monistic approach.⁷⁵ This approach upholds a certain unity of legal systems, which means that international law is an inherent part of the domestic legal system. Specific translation of international law into national regulations is not necessary. The dualistic approach on the other hand implies the existence of two separate legal systems. For international law to become part of the national system according to the dualistic approach it has to be transformed into national provisions. It is up to the legislature to adapt and incorporate international regulations into the national legal system. Consequently, international law forms part of the domestic law after transformation, which means that based on the *'lex posterior derogat legi priori'* rule (i.e. a later law overrules an earlier one) a later domestic regulation can prevail over the previously transformed international regulation.

In the monistic approach an international agreement always obtains effect in the domestic legal system after its adoption. Thus, in the Netherlands international treaty law is binding as soon as it has entered into force. The adoption of international agreements

70 This is certainly the case with multilateral agreements. Modifications are more common in the case of bilateral agreements, which imply that the two parties have to come to a new agreement.

71 Article 19 Vienna Convention; Sondaal 1986, pp. 51-55; Besselink 1995, pp. 32-34.

72 Malanczuk 1997, p. 135; Kooijmans 2008, pp. 99-101; for the procedures regarding reservations, see Arts. 20-23 Vienna Convention.

73 See Malanczuk 1997, p. 63; Kooijmans 2008, pp. 83-85.

74 According to Boerefijn, following Scheinin, there are five methods: (1) adoption, (2) incorporation, (3) transformation, (4) passive transformation and (5) reference. Boerefijn 2009, pp. 577-580.

75 Kooijmans 2008, pp. 86-88.

automatically means that the State-party and all its governmental agencies have an obligation to conduct their policies and regulations according to the international provisions as a part of the national legal system, despite their origin as international provisions. International treaty law is directly applicable and legally binding for the State, its governmental agencies and every citizen. The application of this approach in the constitutional system of the Netherlands, according to several scholars,⁷⁶ finds its origins in the case law⁷⁷ of the Supreme Court of Justice and not, as argued by others,⁷⁸ through its codification in Article 93 Constitution of the Netherlands. The premise since this case law is that international law, which binds the Kingdom under public international law, forms a part of and is binding in its domestic legal system. However, the premise according to the adoption approach has not been applied in the Dutch legal system in a completely unmodified way.

§ 6.4.1 *The binding force of international law in (the Kingdom of) the Netherlands: the distinction*

It must be understood that in the Dutch legal system international treaty law forms part of and is binding in the national system, after the entering into force of the convention. Article 93 Constitution of the Netherlands provides that any provisions of conventions and/or decisions of international organisations that, by their content, may be binding on all persons, have binding force after they are published. It is a rule that includes an obligation for all State-agencies to take consideration of these specific types of international norms in their actions towards individuals. For these binding provisions to be enforced they have to be made accessible, and so they ought to be clear, precise and foreseeable for the general public. The individual should be able to employ these provisions for his or her own protection. This construct contains a modification of the adoption theory in the Dutch legal system. As a matter of fact, dualistic characteristics are incorporated into the adoption approach, as the publication criterion symbolises a degree of ‘transformation’.⁷⁹

Besselink, holding a minority view on the matter, points out that the modification of the monism approach through the publication requirement means that without publication these particular international provisions do not form part of the Dutch legal system or obtain binding force. The publication requirement may be interpreted as a security measure for inhabitants in a case where their rights may be affected by the international law. In a case where the publication of the convention is not required for the incorporation of the international law into the domestic law system, the binding force of the international law has already been created by the adoption of the convention. As a compromise between these two approaches on Article 93 Constitution of the Netherlands, Besselink states that national regulations can be seen as additional requirements to the international law, which also have to be complied with.⁸⁰

In sum, based on the moderate monistic approach applied in the Netherlands, international provisions which are not binding on all people and which have not been

76 See e.g. Hoogers 2005, p. 184; Burkens e.a. 2012, pp. 354-355; Kortmann 2012, pp. 170-171.

77 HR 3 March 1919, NJ 1919, no. 371 (*Grenstractaat Aken*).

78 One of the other scholars is Rogier. See Rogier 2012, p. 200.

79 Kortmann 2012, p. 171; Burkens e.a. 2012, pp. 354-355.

80 Besselink 2007, pp. 63-65.

published, are only binding on governmental agencies, and subsequently these agencies are obliged to create and execute (legal) measures in accordance with the obligations under the convention. Although these provisions do not bind citizens directly, they may indirectly affect their position.

Article 93, together with Article 94, Constitution of the Netherlands⁸¹ enhances a constitutional limitation on the direct applicability of international law within the domestic legal system. Consequently, these two provisions are supervision instruments at the disposal of the judiciary and the Executive. Arguably, Article 94 Constitution of the Netherlands thus contains a competence for the legislature to determine the compatibility of every other type of international law with domestic legislation, as the judiciary does not have an exclusive competence in the matter. So, the legislature also has the scope to determine whether an international provision qualifies as binding on all persons or not. Yet, it is generally accepted that the judiciary is the State-organ which determines the qualifications of provisions under international (human rights) law.⁸²

§ 6.4.2 *Precedence of international (human rights) law over domestic law*

In the Dutch constitutional system, the premise is that international law is of a higher ranking than domestic law. Article 94 of the Constitution of the Netherlands reinforces this by stipulating that provisions binding on all persons and enshrined in conventions and decisions of international organisations precede domestic law in the Kingdom. In actual fact, this provision prescribes the precedence of a specific type of international (human rights) norm over domestic law, namely the so-called 'all binding' norm. It is primarily a matter for the judiciary to decide whether or not a provision under international law qualifies as such. The distinction between anterior and posterior national laws in relation to the international law is not important.⁸³ The judiciary has the competence, after an analysis of the origin, the content and wording of the international law, to decide whether or not it creates directly applicable provisions that bind all persons. Case-law of the Supreme Court of Justice substantiates this approach. The *Spoorwegstaking* case of 1986 is an example, where the Court, after considering the text, content and wording of an international provision, determined the norm to be binding on all persons, thus being directly applicable in the Dutch legal system.⁸⁴ However, earlier, in the *Nyugat* case⁸⁵ of 1959, the Supreme Court of Justice had denied the precedence of provisions of customary international law above national law. Affirmation of this positioning came with the *Harmonisatiewet* case⁸⁶ of 1989 where the Court excluded the review of Acts of Parliament on customary law.⁸⁷ Accordingly,

81 According to Chébtí the formulation of these provisions was inspired by the term applied in the American legal system, which is the concept of 'self-executing' treaties. Chébtí 2014, pp. 92-96.

82 Kortmann 2012, p. 173. The Dutch Executive confirmed this approach once more in 2007. See Parliamentary report II 2007/2008, 29861, no. 19, para. 2.

83 Kortmann 2005, pp. 184-189; Besselink 2008, pp. 25, 30-32.

84 It concerned the direct applicability of Art. 6 ESC (the right to bargain collectively). HR 30 May 1986, NJ 1986, no. 688, para. 3.2. For a case on the provisions (Art. 11 para. 1 sub. b) under the Women's Convention see ECLI:NL:HR:2011:PB3044, para. 3.3.3; for a more recent example confirming this position see ECLI:NL:2009:BJ0655, para. 3.5.2.

85 HR 6 March 1959, NJ 1962, no. 2 (*Nyugat*).

86 HR 14 April 1989, N.J. 1989, no. 469 (*Harmonisatiewet*).

87 For more details on this case and its relevance to the national legal system see § 6.8.1.

in the Dutch system the recognition of provisions in international law as binding on all persons implies that they do not only have binding force for State-organs, but also for citizens. When national law conflicts with such an international provision, the application of the former is disregarded by the judiciary.⁸⁸

The precedence that international law takes over domestic law has undoubtedly strengthened the effectiveness of human rights protection in the Netherlands. In the review of the compatibility of Acts of Parliament with international law, a national legal measure may be declared non-applicable pursuant to Article 94 Constitution of the Netherlands. This review mechanism is of importance for the protection and effectiveness of human rights of Dutch citizens, if the constitutional review prohibition articulated in Article 120 Constitution of the Netherlands is taken into consideration.⁸⁹ Considering the importance of this issue for the protection system in Curaçao, additional remarks follow below.

§ 6.5 Effectuation of international human rights law in Curaçao⁹⁰

Initially, I would have argued that the provisions analysed above on the implications of international law in the Dutch legal system are equally effective in the system of Curaçao as it mirrors the Dutch system. According to Van Rijn, the issue of the direct effect of international law into the domestic law system of the former Netherlands Antilles, i.e. Curaçao, qualifies as an issue of international relations, and so is an affair that comes under the competence of the Kingdom.⁹¹ Thus, similar to the Netherlands, the former Netherlands Antilles upheld a moderate monistic approach in regard to the effectiveness of international provisions within its legal system, based on case law and doctrine. One would assume that the relationship between international law and domestic law would have been regulated in the Constitution of Curaçao; however, unlike the situation in the Netherlands, the domestic constitutional framework on this matter is absent.

In the case of the former Netherlands Antilles it was argued that the Dutch constitutional provisions on the relationship between international and domestic law were seemingly applicable as a result of the legal construction enshrined in Article 3 paragraph 1 sub b and Article 5 paragraph 1 Charter. Article 5 paragraph 1 Charter stipulates:

The Monarchy and the succession of the Throne, the organs of the Kingdom referred to in the Charter, and the exercise of royal and legislative power in affairs of the Kingdom shall be governed, if not provided for by the Charter, by the Constitution of the Kingdom.

This provision prescribes that, as far as matters of the Kingdom have not been provided for in the Charter, the relevant provisions set out in the Constitution of the Netherlands apply. Consequently, a part of the Constitution of the Netherlands is transformed into Kingdom's

88 Van Rijn 1999, p. 121; Besselink 2007, pp. 67-70.

89 This provision upholds a review restriction within the constitutional system of the Netherlands. According to this provision, Acts of Parliament are not permitted to be reviewed under the Constitution of the Netherlands.

90 The consulted literature mostly concerns the legal system of the former Netherlands Antilles. Considering that Curaçao still forms part of the Kingdom, one can fairly assume that the information is still equally valid in its legal system.

91 Van Rijn 1999, p. 120.

law.⁹² Accordingly, Articles 93 and 94 Constitution of the Netherlands are also enforceable in the Caribbean countries as Kingdom's law.⁹³ This means automatically that the definition of the relationship between international and domestic law has to be consistent with the definition used in the Netherlands. Articles 3 and 5 Charter uphold the legal foundation for the application of Dutch constitutional provisions in the domestic legal system.

The notion is that each country within the Kingdom had its own constitutional framework, that the Kingdom's affairs are explicitly mentioned in, inter alia, Article 3 Charter and that the obligation of concordance in legislation under Article 39 Charter did not apply in constitutional law. Based on this, one would assume that the Caribbean countries enjoy a high level of autonomy in the constitutional sense. However, since 2010 the issue of concordance and uniformity in legislation, and subsequently in the judicial system (case-law), between the countries in the Kingdom, has not remained unaffected. This matter is further commented on in § 6.6.

§ 6.5.1 *The legal grounds created through Articles 3 and 5 Charter*

Contrary to the current theory on the transformation of Dutch regulations into Kingdom's law,⁹⁴ Borman considers that Dutch constitutional provisions⁹⁵ are transformed into Kingdom's law based on Article 3 paragraph 1 sub b Charter and not on Article 5 paragraph 1 Charter. He gives a clear enumeration of those parts of the Constitution of the Netherlands which, pursuant to Articles 3 and 5 Charter, are Kingdom's regulations.⁹⁶ I have to agree with him when taking into account the fact that the wording set out in Article 5 paragraph 1 Charter is not explicit on the matter. I cannot deduce from its formulation and from the Explanatory Memorandum that the legislature had an explicit intention to make Article 5 paragraph 1 Charter the sole legal basis for the transforming of Dutch constitutional provisions on foreign relations and the relationship between national law and international law, into Kingdom's regulations. Based on an extensive interpretation of the section of the provision which reads '(...)the organs of the Kingdom referred to in the Charter, and the exercise of royal and legislative power in affairs of the Kingdom, if not provided for by the Charter, by the Constitution of the Kingdom' the legal foundation was created.⁹⁷ The Explanatory Memorandum does not consider that foreign relations, particularly the concluding of international agreements, lie under the scope of Article 5 paragraph 1 Charter.⁹⁸ All this implies though that the relevant provisions in the Constitution of the

92 Consider in the case of Aruba Hoogers & De Vries 2002, pp. 197-200.

93 See e.g. Van Rijn 1999, pp. 120-122; Rogier 1999 (a), pp. 41-42; Van Rijn 2010 (a), pp. 97-98; Borman 2012, p. 138; Hoogers 2011, pp. 372-374.

94 Most authors argue that the legal foundation lies in Art. 5 Charter. See e.g. Van Rijn 1999; Hoogers & Nap 2004; Rogier 1999; Hoogers & De Vries 2002; Hoogers 2011 (b).

95 In this case I refer to Arts. 90-95 Constitution of the Netherlands.

96 Borman 2012, pp. 33-35.

97 Apparently there exists a division among various scholars on this matter. Some scholars argue that the legal foundation is formed by Art. 5 para. 1 Charter, whereas others argue that it is formed by Art. 5 para. 3 in conjunction with Art. 3 para. 1 sub b Charter. *Ibid.*; see also Van Helsdingen 1957, pp. 289-300; Fleuren 2004, pp. 340-342; Hoogers 2011 (b), pp. 372-375.

98 Explanatory Memorandum to the Charter, in: *Wetgeving van de Nederlandse Antillen, Stichting Losbladige Wetgeving van de Nederlandse Antillen, Willemstad – Curaçao (Band I), 2006, p. 20.*

Netherlands on foreign relations are regulations of a higher ranking and thus enforceable in the Kingdom.

The conclusion that can be drawn from this discussion is that Articles 90 to 95 Constitution of the Netherlands are regulations applied in the Kingdom, regardless of their legal foundation. The most logical construction for their status as Kingdom's regulations is Article 3 paragraph 1 sub b Charter in conjunction with Article 5 paragraph 1 Charter. The question is though, whether the effectuation of international law into the legal system of Curaçao comes under the domain of foreign relations under Article 3 paragraph 1 sub b or under the regime of Article 5 paragraph 1 Charter.

§ 6.5.2 *The obligation to give effect to conventions under Article 3 or Article 5 Charter*

The answer to the question whether the effectuation of conventions into the domestic legal system lies under the domain of foreign relations following Article 3 paragraph 1 sub b Charter is, according to Borman, a negative one.⁹⁹ The effectuation at domestic level is not explicitly mentioned as one of the aspects of foreign relations under the regime of Article 3 paragraph 1 sub b or of Article 5 Charter for that matter. These provisions do not create a foundation for the applicability of international law within the domestic legal system. Thus, the interpretation that Article 3 paragraph 1 sub b Charter in conjunction with Article 5 paragraph 1 Charter form the legal basis for the direct effectuation of a convention in the domestic legal system is not correct. It is not an aspect of foreign relations which falls under the competence of the Kingdom.¹⁰⁰ Accordingly, international law which binds the Kingdom forms part of the legal system of Curaçao. No transformation is required. The relationship between international law and the domestic law of Curaçao, following the Netherlands, is established through case law and doctrine. Hoogers and Nap remarked that there exists a general rule, i.e. customary law, on the implementation of international law in (the Kingdom of) the Netherlands, but there is no such (unwritten) general Kingdom's rule on the precedence of international law above national law. They argued that Article 94 Constitution of the Netherlands can be considered to be a provision which regulates the uniformity of the enforceability of national regulations of the countries on international law which are binding on all persons. They suggested further that the former Netherlands Antilles did not have such a provision regulating the hierarchy between international and domestic law.¹⁰¹ Article 94 Constitution of the Netherlands, based on Article 3 paragraph 1 sub b Charter and Article 5 paragraph 1 Charter, is applicable in Curaçao, as its constitutional framework does not provide for mechanisms in this sense and, furthermore, the Dutch provision has a higher ranking as a Kingdom's ruling.

99 Borman 2012, p. 75.

100 Van Helsdingen 1957, pp. 261-286.

101 Hooger & Nap 2004, pp. 78-80.

§ 6.6 Concordance in legislation

The Charter creates under its Article 39 paragraph 1 a concordance of legislation on specific legal areas between the countries.¹⁰² Furthermore, in its paragraph 2 procedural limitations are placed upon the legislative powers of a country as it cannot pass drastic legislative amendments without first seeking the view of the Governments of the other countries on these changes. Prior to the dissolution of the former Netherlands Antilles, Article 98 of its Constitution contained a moderate concordance principle, which stipulated that Antillean Acts of Parliament in the identified legal area should be enacted as much as possible in concordance with the law of the Netherlands.¹⁰³ Although an equivalent norm has not explicitly been incorporated in the new Constitution of Curaçao, since 2010 the issue of the concordance and uniformity in legislation has received further attention, in anticipation of the reduction in concordance in legislation and case-law due to the dismantling of the former Netherlands Antilles.¹⁰⁴ It became clear, with the signing of the 'Final Declaration' of 2006, that extensive concordance between the countries was aspired to, consequently meaning further limitation of the (already limited)¹⁰⁵ legislative autonomy of the then future self-governing country of Curaçao. Not only would the already identified legal areas lie under the concordance in legislation, but other legal areas as well.¹⁰⁶ The concordance of legislation stemming from Article 39 Charter was strengthened with the enactment of the Mutual Agreement on the Official Legislative Consultation on the Kingdom's Relations in 2013.¹⁰⁷ Through the application of this agreement a mandatory obligation for consultation on (the approach and content of) legislative affairs¹⁰⁸ between the countries within the Kingdom has been created. Furthermore, the degree of concordance and uniformity in legislation also follows from the enactment of the Mutual cooperation agreement uniform law of procedure, as prescribed in Article 39 paragraph 1 Charter, which has as its objective the ensuring of

102 Article 39 para. 1 Charter prescribes that: 'The civil and commercial law, civil procedures, criminal law, criminal procedures, copyrights, intellectual property ... in the Netherlands, Aruba, Curaçao and Sint Maarten are as far as possible regulated in a similar manner.' See Borman 2012, pp. 193-194.

103 This principle was already codified in the General Governmental Regulation of 1865. Dip 1969, pp. 1-6.

104 For contributions on the concordance in legislation and case-law before and after the reforms see Seinen 2014, pp. 269-276; De Haan 2013.

105 This power was already limited by the mechanism enshrined in Art. 44 Charter. It stipulates that the provisions on fundamental rights and freedoms, on the powers of the Governor, on the powers of the representative assembly and the administration of justice enshrined in the Constitutions of countries in the West, cannot be amended without the consent of the Government of the Kingdom. Article 44 para. 2 prescribes further that the draft national ordinance, as referred to in the preceding paragraph, shall be submitted to the representative body of the country concerned and not examined by it, without first having obtained the opinion of the Kingdom's Government. This provision is seen as a safety net against violations of fundamental rights and to maintain the rule of law and legal certainty.

106 '*Slotverklaring van het Bestuurlijk overleg over de toekomstige staatkundige positie van Curaçao en Sint Maarten*', Den Haag 2 November 2006, p. 2; Van der Woude 2007 (a), pp. 176-178; Van der Woude 2007 (b), pp. 261-263.

107 Str. 2013, no. 2376.

108 The issues enumerated in Art. 2 Mutual Agreement on the Official Legislative Consultation on the Kingdom's Relations are among other things: (a) issues related to the concordance of legislation under Art. 39 Charter, (b) issues related to the execution of the Mutual Cooperation Agreement uniform law of procedure Aruba, Curaçao and Sint Maarten, (c) matters related to the linkage between the procedural law of Aruba, Curaçao and Sint Maarten on the one hand and the BES-islands on the other hand; (d) the compilation of instruments on the field of the quality of legislation etc.

the uniform adoption of parts of the procedure law by the countries, thus facilitating the reviewing task of the judiciary.¹⁰⁹

So, Article 39 paragraph 1 Charter accords a norm for the legislature but, as a corollary of this norm, a certain degree of concordance in case-law is encountered.¹¹⁰ However, as pointed out by Lewin, the judiciary does not have the task of compensating for differences in legislation between the countries through the strict maintenance of concordance in case-law. The approach that differentiation in legislation in the countries is permitted as long it only concerns fundamental socio-cultural views, following the case-law of the Supreme Court of Justice, is far-reaching. Lewin is of the opinion that the Supreme Court does not have a voice in the determination of the strictness of concordance, starting from the principle of the separation of powers, thereby respecting the will of the national legislature in the matter, and the autonomy of the countries.¹¹¹ In her contribution on the matter Seinen points out that the Supreme Court of Justice, as the highest judicial institution, initially did hold a restrictive approach on reviewing cases of the Common Court of Justice, where local socio-cultural views played a role. Later on it altered its approach, often upholding the law as prescribed and according to its case-law following Dutch (i.e. European) standards and not taking much account of the local circumstances, contrary to the view of the Common Court of Justice.¹¹² I have to note though, that, in some cases, this approach did benefit the inhabitants, particularly women.¹¹³

Seeing the further divergence of legislation between the countries since 2010, De Haan favours the enforcement of concordance, pursuant to Article 39 paragraph 1 Charter, considering the specific characteristics of these small-scale Caribbean islands and the (active) role that the judiciary has to play in the maintenance of the unity of law within the Kingdom. He thus argues in favour of starting from a restrictive approach on the application of the phrase ‘... as far as possible in a similar manner ...’ and with proper consideration for local circumstances. Thus, in his view concordance in legislation is necessary but starting from a contextual approach. He pointed out that this is particularly related to the development in the case-law of the Supreme Court of Justice on Dutch-Caribbean cases, particularly those of 2011 and 2012.¹¹⁴ For instance, in a case of 2012 the Supreme Court of Justice stated firmly that developments in Dutch case-law should not unreservedly find their resonance

109 The Cooperation Agreement uniform law of procedure Aruba, Curaçao and Sint Maarten of 27 September 2010, *Curaçaose Courant* 2010, no. 35. It replaces parts of the former Cooperation Regulation of the Netherlands Antilles and Aruba (SWR) of 1986 (P.B. 1985, no. 88). Hoogers remarks that it is quite odd that this ruling is not applicable to the Caribbean Netherlands (the so-called BES-islands). As a consequence of this, he predicts that the procedural law of these islands will differ in the course of time from that of the other Caribbean countries, as Dutch procedural law will apply to the BES-islands. Hoogers 2011 (c), pp. 85-86.

110 This concordance in case-law is expected to diminish partly as a result of the difference in views that can result from the interpretation of (European) law by the Supreme Court of Justice and the new Constitutional Court of Sint Maarten. The first case of 2013 of the latter institution confirmed this, already exposing different interpretations of (Art. 3) ECHR by these judicial institutions. This case was even mentioned in the House of Representatives concerning its possible consequences for Dutch legislation on the matter concerned. See Seinen 2014, p. 274; Letter Secretary of State of Security and Justice (F. Teeven) to the President of the House of Representatives, ref. 485633, topic: ‘*Beantwoording Kamervragen over de tenuitvoerlegging van de levenslange vangenisstraf*’, 4 March 2014.

111 Lewin 2008, pp. 194-199.

112 Seinen 2014, pp. 265-269; De Haan 2013, pp. 150-151.

113 See e.g. HR 7 May 1993, NJ 1995, no. 259, m. nt. E A Alkema (*Mathilda c.s. v Roman Catholic Central School Board (RKCS) & EG Curaçao*). For more details on this case see § 7.7.1.1.

114 De Haan 2013, pp. 150-156.

in Antillean case-law based on the concordance under Article 39 Charter, particularly when the former is induced by and based on European legislation and case-law of the European Court of Justice. Moreover, differentiation is permissible based on local socio-cultural views or on the conscious choice of the national legislature for a deviating regime.¹¹⁵

In sum, the 'autonomy' of Curaçao is ensured in its constitutional framework which includes the country's obligation to protect and promote its own internal interests.¹¹⁶ The competency over its legislative and executive governmental powers has (in)directly been restricted through the aspiration to maintain the concordance in legislative matters as far as possible and the enactment of consensus-Kingdom's Acts on crucial internal areas, like the public finances, the administration of justice and law enforcement.¹¹⁷ Yet, local circumstances have their impact on the way that legislation is implemented and on the way in which governmental powers are executed by the subsequent State-agencies, including the judiciary.

§ 6.7 Supervision by the Kingdom and its involvement in the internal affairs of Curaçao

Consequent upon the Kingdom's structure, in cases where Curaçao neglects its responsibilities the Kingdom can intervene in its internal affairs, not just through Article 50, but also Article 51 Charter.¹¹⁸ Article 51 Charter¹¹⁹ stipulates that when governmental agencies do not execute their obligations and duties as ascribed in legal measures such as the Charter and conventions, the Kingdom can intervene through a Kingdom's regulation. The difference between these two mechanisms lies in the character of the situation that has to be restored. The norm under Article 51 Charter is directed towards the correction of structural harmful situations, while measures based on Article 50 Charter are of a more incidental nature. These powers invested in the Kingdom are only to be used¹²⁰ as 'as a last resort' to redress wrongful situations, to reinstall good governance, rule of law, and to ensure fundamental rights.¹²¹ In addition, the new regime under Article 27 paragraph 3 Charter strengthens the further involvement of the Kingdom and its ultimate responsibility in the proper implementation of international (human rights) law. Lastly, one should not forget the ultimate supervisory provision under Article 43 paragraph 2 Charter. Considering the challenges related to its scope and effectuation, additional remarks follow in § 6.8.1. All in all, at the Kingdom's level thus far, administrative supervision is allowed through, inter alia, the mechanisms described above, while judicial review is excluded.

Noteworthy also are the supervision mechanisms set down in several consensus-Kingdom's Acts of 2010, as part of the new constitutional framework of Curaçao; Acts which give expression to further collaboration among the countries at Kingdom's level. They

115 See ECLI:NL:HR:2012:BX5797, para. 3.3.2.

116 Article 41 para. 1 in conjunction with Art. 42 para. 1 Charter.

117 This point of view is substantiated in § 6.10. See e.g. De Jong 2009, p. 17; Van der Woude 2007 (a), pp. 175-182; Van der Woude 2007 (b), pp. 261-268.

118 Nap 2003, pp. 39-40.

119 See also Art. 22 Rules of procedures Governor of Curaçao.

120 The governmental institution in charge of this supervision for the Government of the Kingdom is the Governor. Article 20 Rules of procedures Governor of Curaçao.

121 Hillebrink 2008, pp. 155-164; van Rijn 2005, p. 304; Parliamentary report II 2010/11, 32 850, no. 2, pp. 5-6.

expose limitations in the countries' legislative and executive powers.¹²² Scholars confirm this by putting forward the view that these Kingdom's Acts affect the autonomy of the Caribbean countries.¹²³ For instance, the Kingdom's Act on financial supervision¹²⁴ sets up a Committee that has far-reaching supervisory, scrutiny, reporting and advisory competences in regard to the budget and expenditure of Curaçao (and Sint Maarten).¹²⁵ In cases of non-compliance by the national Executive with the stipulated norms, in particularly those in Article 15 of this Kingdom's Act, the Council of Ministers of the Kingdom, on the advice of the Committee, can impose a supervisory measure on the local Executive demanding the modification of the budget according to the stipulated norms. Appeal by the local Executive through recourse to the Crown under Article 26 is possible. However, this procedure lacks the independence and impartiality that should be guaranteed by a judicial procedure as it is the same State-agency which imposed the measure in the first place that takes a final decision on appeal, following the advice of the Council of State of the Kingdom on the matter.¹²⁶ As a matter of fact, in July 2012 the Council of Ministers of the Kingdom used this instrument to enact an Order in Council for the Kingdom containing instructions for the Executive of Curaçao to adapt its then draft budget and expenditure. The appeal entered in November 2012 by the Executive of Curaçao against this decision was rejected and the measure was maintained.¹²⁷ This measure was lifted in March 2014.¹²⁸ Another example which illustrates the further degree of involvement and supervision by the Kingdom lies in the consensus-Kingdom's Act on Police forces, under its Article 52. Pursuant to this norm the Kingdom has the power to impose a measure under a Kingdom's Order in Council upon a country in accordance with the mechanism enshrined in Article 51 Charter, if it considers, after consultation with the country concerned, that the cooperation as defined in the Act has not or not sufficiently been reached by it. Unlike the consensus-Kingdom's Act on Financial supervision, no appeal possibility has been established in these circumstances.

The application of consensus-Kingdom's Acts under Article 38 paragraph 2 Charter, regulating internal affairs at Kingdom's level following legislative procedures under the Charter, implied effectively a lower degree of involvement in the decision-making powers of the State-organs of Curaçao, regardless of the fact that it had consented to them.¹²⁹ To

122 Considering that these Kingdom's Acts regulate domestic affairs, the unilateral termination authority of the countries should have been incorporated. See Borman 2012, pp. 188-189; Qoubbane 2010, p. 159; RvA no. RA/05A-09-RW, para. 5.

123 See e.g. Nehmelman 2009; de Jong 2009; Verheij 2010; Van Dijk 2010; Bovend'Eert 2011.

124 Stb. 2010, no. 334.

125 Article 4 Kingdom's Act on Financial Supervision.

126 It must be pointed out that the system of Crown Appeal, since the *Benthem* case of 1985 (Judgment of 23 October 1985, Appl. no. 8848/80) is not considered to be an independent review institution under (Art. 6) the European Convention of Human Rights. Hoogers 2011 (c), pp. 93-96.

127 The objections of local Executive regarded, inter alia, the limited time it received to express its views on the measures, the lack of due care of the Kingdom's Executive, lack of participation and communication on the matter between the agencies concerned. See Kingdom's Decree of 2 November regarding the decision on the appeal of the Government of Curaçao on the Decree of 13 July 2012 (*Stb. 2012, no. 338*), *Stb. 2012, no. 535*, paras. 2.1.1-2.1.3.

128 Article 13 paras. 2, 5 and 6 Kingdom's Act on Financial Supervision (*Stb. 2012, no. 338*); Committee on Financial Supervision (CFT) Chairman Age Bakker: "*Curaçao has fully complied with the instruction*", 7 March 2014, available on www.cft.cw, downloaded on 8 March 2014.

129 The legislative procedure for the adoption of consensus-Kingdom's Acts based on Art. 38 para. 2 Charter is similar to that for the adoption of Kingdom's Acts regulating Kingdom's affairs based on Art. 3 Charter. No specific procedure was enacted for the adoption of consensus-Kingdom's Act, which formed a major legal

mitigate such faults within the Kingdom's structure, meaning the maintenance of inequality in power relations between the partners, countless suggestions on the strengthening of the democratic legitimacy and accountability of the Kingdom's organs have been presented.¹³⁰ By 2010 the new Kingdom's structure had been realised without the introduction of such accountability mechanisms though.

On the other hand, after 2010 the Kingdom's Executive kept its authority to take corrective actions against the Caribbean countries based on its higher supervisory competence under Article 50 Charter.¹³¹ The Kingdom has herewith, through the Governor, the competency to suspend and nullify national regulations established by the national legislatures, if they are in conflict with provisions of conventions, or with the Charter and the Kingdom's interest. This nullification competency of the Executive is not subject to a possible declaration by the judiciary that it is legally void.

§ 6.8 Judicial review in Curaçao

An absolute prohibition of constitutional review is not provided for in the legal system of Curaçao. A norm modelling the rule under Article 120 Constitution of the Netherlands was not incorporated in its Constitution. It is noteworthy that in the Netherlands a proposal for the introduction of a partial review on civil and political rights in the Constitution of the Netherlands had already been made in 2002. Although the first phase of the procedure was finalised in 2009, the process has yet not culminated in the adoption of the provision.¹³² In his contribution on the matter Hoekstra argued for the introduction of full-fledged constitutional review by an independent institution (read: Constitutional court) where individuals can also enter a complaint, and not just State-agencies, complementing the principal review of the legislature, instead of the partial review as proposed.¹³³ In reality, this court will have a subsequent reviewing authority.

challenge during the process of their enactment in the first place. See e.g. Van der Woude 2007 (a); Van der Woude 2007 (b); Nehmelman 2009; De Jong 2009; Qoubbane 2010; Hoogers 2010 (a), pp. 276-278; Verheij 2010; Bovend'Eert 2011; Borman 2012, pp. 186-192; Broekhuijse 2012.

130 The establishment of '*de onderraad*' (the sub council) to the Kingdom's Council of Ministers in 2007 is significant. This Council of Kingdom's affairs, consisting of the Dutch (i.e. Kingdom's) Ministers of General Affairs, Interior and Kingdom's Affairs, Defence, Finances and Security and Justice, together with the three Ministers Plenipotentiary of the Caribbean countries, prepares the decisions for final decision-making in the Kingdom's Council of Ministers. Borman 2012, p. 96; Broekhuijse 2012, p. 72; for comments on the shortcomings within the Kingdom's structure see § 6.10.

131 Article 50 para. 1 Charter stipulates that those legislative and executive measures in the Caribbean countries, which are in dispute with the Charter, international regulations, Kingdom's Acts and Orders in Council for the Kingdom, and also the interests of the Kingdom, may be nullified and suspended by the King as Head of the Kingdom. The King, in this case the Government of the Kingdom, has the authority to exercise a supervision power in the Caribbean territories. In the case of negligence, the Kingdom is permitted to intervene in internal affairs of these countries, through the Governor. According to the Explanatory Memorandum of Arts. 19 and 20 Constitution Netherlands Antilles, the authority of the Governor to nullify regulations like Acts of Parliament in the former Netherlands Antilles was sufficient supervision to prevent the enactment of lower regulations that were in dispute with higher regulations. Van Helsdingen 1956, pp. 90-94.

132 For substantive criticism on the arguments underlining the so-called '*Halsema proposal*', see Besselink 2003, pp. 89-95. For more information on the status of the procedure, see Breunese 2010; Breunese 2013; Broeksteeg 2014, p. 49.

133 Hoekstra 2011, pp. 258-259.

In the Dutch constitutional system the premise of the primacy of the legislature still prevails.¹³⁴ Principal review of draft Acts of Parliament on their constitutionality rests with the legislature and the Council of State as its advisor.¹³⁵ This approach is accentuated by the Taverne proposal of 2012 which intends to limit the review powers of the judiciary, in response to the increased influence of international human rights law at national level, particularly the case-law of the European Court of Human Rights.¹³⁶ It would appear that, hereby, the determination of and the last word on the direct applicability of international (human rights) law in the Dutch legal system, under Article 94 Constitution of the Netherlands, ought to come under the sole competence of the Parliament. As anticipated by many people¹³⁷ the adoption of such a proposal will have drastic consequences for the protection offered to individuals not only in the Netherlands, but also in Curaçao. In her contribution on the matter Chébtí dwells extensively on the possible international-based and practical repercussions of the proposal for the Dutch legal system.¹³⁸ She shows, based on case-law,¹³⁹ that the belief that the national judiciary, particularly the Supreme Court, has been exercising its review powers less restrictively is not correct.¹⁴⁰ The opposite is often the case. Fleuren & Wit were already of the same opinion.¹⁴¹

The fact is that, effectively, the prohibition of constitutional review in the Dutch system has, however, been partially abrogated by the review of all national legislation on international regulations which bind all persons pursuant to Articles 93 and 94 Constitution of the Netherlands.¹⁴² In practice, the Dutch judiciary acts, through its review powers under these norms, as a ‘quasi-constitutional’ court.¹⁴³ All this means that in this system the legislature is the only competent authority to give an appraisal of the legality of domestic law as it touches on the provisions of conventions which are not binding on all persons, which are often assumed to be social rights, and as it touches on customary international law.¹⁴⁴

In the former Antillean legal structure, there were supposedly two provisions¹⁴⁵ which could have had some significance for the relationship between international and Antillean

134 See e.g. Martha 2008, pp. 73-97; Sap 2003, pp. 159-164; Kortmann 2012, p. 80.

135 Hoekstra 2011, pp. 254-257.

136 For a contribution on the importance of European human rights law for the Dutch legal system see Corstens 2012, pp. 6-10.

137 See e.g. Fleuren & de Wit 2012, p. 2814; Corstens 2012, pp. 4-5; Chébtí 2014, p. 84.

138 Chébtí 2014, pp. 107-124.

139 ECLI:NL:HR:2009:BJ0655, paras. 3.5.1-3.5.2; ECLI:NL:HR:2013:CA2818, paras. 3.2-3.3.

140 See e.g. Corstens 2012, pp. 5-6; Chébtí 2014, pp. 98-100.

141 Fleuren & de Wit 2012, pp. 2816-2817.

142 The concept of ‘national legislation’ within this context has a broader significance. It applies not only to Acts of Parliament, but also, according to case-law, lower-ranking regulations. Besselink 2008, pp. 41-44.

143 Corstens 2012, p. 1.

144 Burkens e.a. 2006, p. 331; Kortmann 2012, p. 173; However, proposals have been made by the Commission concerned with the revision of the Constitution of the Netherlands in 2010 on the introduction of judicial scrutiny of domestic law on customary international law. Hoogers was very critical about these proposals. See Hoogers 2011 (b), pp. 376-379. The so-called ‘Taverne-proposal’ of 2012 contains the opposite objective, namely the restriction of the review powers of the national judiciary. See e.g. Fleuren & de Wit 2012; Corstens 2012, pp. 4-5; Chébtí 2014.

145 Articles 19 and 20 Constitution of the Netherlands Antilles. Martha was one of the few authors who drew attention to these provisions. He suggested that they created a possibility for the constitutional review of federal Acts of Parliament. Martha 1988; Martha 1999, pp. 41-54; the judiciary ignored this approach though and in a case of 1986 the Court of Appeal declined an appeal on these provisions which could have implied the direct applicability of all conventions in the Antillean legal system. According to the Court the provision in the convention concerned upheld an instruction for the Executive and it did not qualify as a ‘directly binding’

law and the possibility of review. Literature paid little attention to their possible implication for the effectuation of international law at the domestic level. The difficulty lay in the questions which these provisions raised on (1) the effectuation of conventions domestically and (2) the competency of the judiciary in cases of conflict between international and domestic law. The competency of the judiciary stemmed primarily from Article 94 Constitution of the Netherlands which already gave the judiciary the competency to correct violations perpetrated by national governmental agencies and third parties.

§ 6.8.1 *The background on the prohibition of judicial review*

In the former Netherlands Antilles, the judiciary followed the Dutch doctrine on the prohibition on constitutional reviews of Acts of Parliaments for its reviewing competence.¹⁴⁶ Its foundation was firstly based on a wrongful interpretation of Article 21¹⁴⁷ of the Constitution of the Netherlands Antilles,¹⁴⁸ as this provision did not include a norm on the prohibition of constitutional review in the former Netherlands Antilles.¹⁴⁹ The prohibition was maintained however and in 1989 it was provided with a legal foundation, through the *Harmonisatiewet* case¹⁵⁰ of the Supreme Court of Justice, in which it was decided by the Court that the tradition of the prohibition on constitutional review existed in the entire Kingdom. Consequently, the review of Acts of Parliament according to the constitution of each country, the Charter¹⁵¹ and customary constitutional law¹⁵² was not permitted, as long as a Kingdom's Act pursuant to Article 49 Charter did not define the matter. The Antillean Common Court of Justice pointed out that this had also been the case in the former Netherlands Antilles and despite the fact that its Constitution did not contain a prohibition on constitutional review, the common tradition of non-review and the absence of consensus on this matter, through which this tradition could have been altered, preserved this doctrine.¹⁵³

provision. GHvJ of 9 September 1986, in: TAR-Justicia 1988, no. 3, pp. 134-141 m.nt. R.S.J.M. (*Perdomo v de Nederlandse Antillen*); see also GHvJ of 4 September 1990, in: TAR-Justicia 1991, no. 1, pp. 28-30 (*Antonia & Paulina v EG Curaçao*).

146 For extensive information on the essence of the case-law of the Court of Appeal of the former Netherlands Antilles (and Aruba) and the Supreme Court of Justice of the Netherlands in Antillean (and Aruban) civil cases, see Lewin 2009.

147 Article 21 Constitution Netherlands Antilles: *'Behoudens de stuiting in geval van schorsing, verbinden de bepalingen ener landsverordening totdat zij ten gevolge van een latere landsverordening of ingevolge artikel 20 zijn vervallen, of het besluit van de Koning tot haar vernietiging in de Nederlandse Antillen in werking getreden is.'*

148 Since the case of the Court of Justice of Curaçao of 2 April 1951 (*Chin-A-Pauw*) it was stated that Art. 21 in itself strengthened a prohibition on judicial review. This provision concerns the competence for the nullification of a provision in dispute with a higher regulation. In the *Chin-A-Pauw* case it was argued by the judiciary that this competence belonged to the Executive and not to the judiciary, and consequently constitutional review by the judiciary was not permitted. For details on the merits of this case see Luiten 1983, pp. 220-221; see also Van Helsdingen 1956, pp. 94-95; Dip 1995, pp. 21-27; Van Rijn 2005, pp. 305-306.

149 De los Santos 1951, pp. 90-93; Luiten 1983, pp. 219-222; Martha 1988, pp. 13-23; Martha 1995, pp. 41-64.

150 HR 14 April 1989, N.J. 1989, no. 469.

151 This also affected the other Kingdom regulations that are applied in the territories, such as Kingdom's Acts and Orders in Council for the Kingdom. According to de Werd, although the Supreme Court in the *Harmonisatiewet* case of 1989 did exclude constitutional review at the national level, the case considered the plausibility and desirability of constitutional review at the Kingdom's (federal) level, where national law and lower Kingdom's rulings could be reviewed on Kingdom's Acts. De Werd 1998, pp. 1870-1872.

152 For a recent case confirming this approach see ECLI:NL:HR:2013:CA2818.

153 See GHvJ of 4 September 1990 (*Antonia & Paulina v EG Curaçao*), in: TAR-Justicia 1991, no. 1, pp. 28-30; see also van Rijn 2005, pp. 306-308.

This strengthened the refusal of the introduction of judicial review on Acts passed by the legislature. As stated by Martha, the stance of the judiciary acted as a major restraint on taking a stand on reviewing (wrongful) Acts of Parliament on their constitutionality in the post-colonial society of the former Netherlands Antilles, i.e. Curaçao, where inequality in treatment and opportunities and lack of responsibility of the State-agencies towards the people persisted.¹⁵⁴ Moreover, the Kingdom does not have a legal system based on tradition. Each country within the Kingdom was autonomous in its constitutional framework and subsequently in the application of the '*lex superior*' rule.¹⁵⁵

Even the introduction of partial constitutional review, which has been the case in Aruba since 1986,¹⁵⁶ constituted a major challenge for the former Netherlands Antilles. The restructuring of the Kingdom in 2010 was a unique opportunity for the countries to make fundamental changes in this area. Sint Maarten was the only country in the Kingdom which did take this opportunity and it introduced general constitutional review under Article 119 Constitution of Sint Maarten. The norm under its paragraph 1 introduces some restrictions to these powers however. It stipulates that the judiciary will withhold from reviewing when there is insufficient interest or when the contents of the provision in the Constitution do not permit reviewing of it.¹⁵⁷ This country followed with the institution of a national Constitutional Court in 2010,¹⁵⁸ pursuant to Articles 127 and 128 Constitution of Sint Maarten,¹⁵⁹ which has the power to scrutinise the legality of adopted legal measures that have not already been brought into force. The Ombudsperson is the only organ authorised to request a precautionary scrutiny though.¹⁶⁰ Thus, it concerns a prior scrutiny by the court. However, in this structure the possibility of appeal has not been created. Up until May 2014, the Court has handled one such case presented to it by the Ombudsperson in 2013, on the legality of provisions incorporated in the Criminal Code on, inter alia, lifelong imprisonment and the legalising of prostitution and their conformity with the Constitution of Sint Maarten. A final decision was given in November 2013,¹⁶¹ where the Court decided that the

154 Martha 2008, pp. 73-97; see also Verton 2002; Chapters 2 and 8.

155 Rogier 1999 (b), p. 33; Martha 1995, pp. 55-59.

156 Aruba introduced this instrument when it obtained its autonomous status in 1986. Under this provision, judicial review of Acts of Parliaments on civil and political rights in the Constitution of Aruba was created. Article I.22 Constitution of Aruba. However, this scrutiny mechanism has not yet been effectuated. Hoogers 2011 (a), p. 313.

157 Article 119 para. 1 Constitution of Sint Maarten.

158 The former Cooperation Regulation of the Netherlands Antilles and Aruba (SWR) of 1986 (P.B. 1985, no. 88) instituted a Constitutional Court, which had the power to adjudicate in disputes between the countries, pursuant to its Art. 36. The disputes related to its interpretation and application and the compatibility of national (legal) measures with this agreement. This Court was, however, never officially set up.

159 This court was established by national ordinance as prescribed in Art. 128 para. 8 Constitution of Sint Maarten. This national ordinance regulates inter alia the set up, tasks and procedures of the court (AB 2010, GT no. 29).

160 Article 17 National ordinance Constitutional Court Sint Maarten. For a comparison between the Constitution of Curaçao and the Constitution of Sint Maarten, particularly with regard to the issue of judicial review, see Van Rijn 2009, pp. 228-243; Hoogers 2011 (a), pp. 310-314.

161 In this first case the Court gives explanations about its powers and workings. See CC SXM, Decision of 8 November 2013, in Case 2013/1, paras. 1-2. For a substantive comment on this decision and its importance for the Dutch legal system see Schutgens & Sillen 2014, pp. 508-514.

national provisions regarding lifelong imprisonment conflicted with the Constitution and international human rights law,¹⁶² whereas the provision on legalising prostitution did not.¹⁶³

§ 6.8.2 *Constitutional review in Curaçao*

At present Curaçao has partial constitutional review. In Article 101 Constitution Curaçao it is stated that the judiciary is not permitted to evaluate Acts of Parliament on the Constitution, with the exception of the civil and political rights enshrined in Articles 3 to 21 of the Constitution. In a case of conflict, the judiciary can declare the national law not binding. This position follows the example of Aruba. In the Explanatory Memorandum to the Constitution of Curaçao it is stated that the general point of departure of the provision entails a prohibition of review by the judiciary. Only review of those civil and political rights which are incorporated in the Constitution is permitted, and not of the other fundamental rights and freedoms.¹⁶⁴ This is contrary to the substantive arguments in favour of the introduction of full constitutional review from authors like Martha and Wit.¹⁶⁵

In sum, the constitutional system of Curaçao strengthens judicial review of lower legislation on higher legislation and constitutional review of Acts of Parliaments on the civil and political rights in the Constitution of Curaçao. The latter review mechanism, implying a subsequent constitutional review, already existed by virtue of the review of national law on international human rights provisions of conventions binding on all persons, and which are mostly civil and political rights. The review of domestic law on international human rights law is of great importance considering the conditions on keeping up with the (international and regional) developments on the effectuation of international human rights law as stipulated by the international and treaty-based bodies.¹⁶⁶ Hoogers argues though, following Article 49 Charter, that the establishment of the relationship between domestic law and international law, and subsequently the review of the former on the latter, is an exclusive authority of the Kingdom's legislature, which can only be regulated through a Kingdom's Act.¹⁶⁷ The provision stipulates that judicial review of domestic law on the Charter, Kingdom's laws and international law ought to be recorded in a Kingdom's Act; an action which has not been (entirely) carried out yet. At the moment the enacted (consensus) Kingdom's Acts cannot be reviewed upon higher rulings, such as the Charter and international (human rights) law, by the judiciary.¹⁶⁸

The prerogative to determine constitutionally the relationship between domestic law and international law and the effectiveness of international human rights law in the domestic

162 It concerned de facto infringements on Arts. 3 Constitution of Sint Maarten, Art. 3 ECHR and Art. 10 ICCPR in the case of lifelong imprisonment. See CC SXM, Decision of 8 November 2013, in Case 2013/1, paras. 3.5.1-3.5.9.

163 *Ibid.*, paras. 3.7.5-3.7.10.

164 Explanatory Memorandum on the Constitution of Curaçao, pp. 3, 42, available on www.gobiernu.cw.

165 Martha 2008, pp. 73-97; Wit 2007, pp. 205-218.

166 As an example of this, one can take the outdated formulation of the fundamental human rights in the Constitution of the former Netherlands Antilles of 1955. These rights have never been revised by the Parliament of the former Netherlands Antilles since their enactment.

167 Hoogers 2005, pp. 184-185; Hoogers 2011 (b), p. 373.

168 The introduction of judicial review of the compatibility of domestic law with Kingdom's law was never effectuated. Judicial scrutiny of the compatibility of domestic law with international law is already provided for in (Arts. 93 and 94) the Constitution of the Netherlands. See e.g. Van Helsdingen 1957, pp. 505-509; Van Rijn 1999, pp. 102-103; Borman 2012, pp. 175-178; Hoogers 2005, pp. 187-188.

protection system is a Kingdom's matter under Article 5 paragraph 1 Charter, Articles 93 and 94 Constitution of the Netherlands and also Article 49 Charter. It should be noted though that with the above mentioned proposals to amend Articles 93 and 94 Constitution of the Netherlands, which are Kingdom's law, the protection offered to the inhabitants of the Caribbean countries is directly affected. Unfortunately, the position of these countries is not considered in these proposals.¹⁶⁹

§ 6.9 The setting down and the realisation of fundamental rights in the domestic framework

In spite of the fact that I would describe, following Wit and Hoogers, the Constitution of Curaçao as unsatisfactory and uninspiring, it contains a relatively modern list of fundamental rights and freedoms, which is an improvement in comparison with the rights¹⁷⁰ set out in the Constitution of the former Netherlands Antilles. Yet, as put forward by particularly Wit, because the regulation models the Constitution of the Netherlands, it does not suit and give expression to the constitutional, political and socio-cultural realities and necessities of a small-scale Caribbean island. Stronger and well-delineated mechanisms of checks and balances and monitoring, like the setting up of an anti-corruption authority,¹⁷¹ the enabling of full-fledged constitutional review by the judiciary or the establishment of a Constitutional Court where inhabitants could also enter their complaints for review of lower domestic law on the Constitution, would have served Curaçao better. Granting powers to the Ombudsperson or a human rights institution to scrutinise individual cases of human rights violations and to take action against governmental agencies for non-compliance with its decisions is another example. Another bad move regards the incorporation of norms¹⁷² on the Common Court of Justice and public prosecution services which effectively lost their purpose, as their effects are greatly weakened by the consensus-Kingdom's Acts on the matters. In my view, following Wit, a human rights-based approach, where proper consideration was taken of the local context when drafting this regulation, would have been more suitable.¹⁷³

Nevertheless, the Constitution of Curaçao does include all three categories¹⁷⁴ of fundamental rights and freedoms.¹⁷⁵ A couple of rather progressive human rights in Articles

169 This view is confirmed by the proposals on the revision of Arts. 90-95 Constitution of the Netherlands. In these proposals not much account is taken of the position of the Caribbean countries. See Hoogers (b) 2011, pp. 369-374. See also Chébtí 2014, where the proposal on the restriction of the review powers of the national judiciary in the Dutch legal system is discussed. Again, no attention was paid by the author to the repercussions of these changes for the protection system of the Caribbean countries.

170 With the exception of the right and freedom to enjoy education laid down in Art. 140, the Constitution of the former Netherlands Antilles did not uphold any social, economic or cultural rights.

171 See the proposals presented by ten Berge on the matter which, although short, make sense. Ten Berge 2011, pp. 9-10.

172 Arts. 97-109 Constitution of Curaçao.

173 In 2007 Wit had already warned about the enforcement of the draft of the constitution, as this would not in many aspects comply with or serve the necessities and realities of the island and its people. The draft became, leaving aside minor adaptations, the present Constitution for Curaçao. Wit 2007, pp. 210-216; Hoogers 2010 (a), pp. 268-274.

174 The only collective right is the right to a clean natural environment laid down in Art. 24 Constitution of Curaçao.

175 Article 21 Constitution of Curaçao regards the freedom and right to enjoy a proper education. This is the only provision which enhances both dimensions of fundamental rights.

26 and 27 Constitution of Curaçao, as well as a more modern formulation of the equality norm prescribed in Article 3, are included. Article 26 Constitution of Curaçao¹⁷⁶ concerns the protection of the family by the Government, as it now has an obligation to introduce (legal) measures with the objective of promoting a healthy family life. In the Explanatory Memorandum it is stated that, under the promotion of a healthy family life, lies inter alia the recognition of the rights and duties of each member of the family, the realisation of peaceful communication within the family set-up and the support of each member of this social group, and the responsibility towards (financial) support in the education of children. A link is made between the right as set out in the Constitution of Curaçao and Article 8 ECHR but not with Article 16 Women's Convention.¹⁷⁷

Article 27 Constitution of Curaçao¹⁷⁸ addresses the obligation of the Government to protect young people and their right to (cultural) education, sport and recreation. It forms the legal ground for the promotion of the welfare of underage children. Young adults between 18 and 28 years of age, who are pursuing further education or a vocational training, also come under the protection of this provision.¹⁷⁹

Finally, I have to point out that Besselink had already argued in 2002 that, besides the domestic framework of fundamental rights contained in the Constitution of Curaçao, there are also the so-called 'Kingdom's fundamental rights'. He stated that, despite the omission in the Charter of a fundamental rights catalogue for the 'federal' state of the Kingdom, through Article 5 paragraph 1 Charter, the fundamental rights and freedoms formulated in the Constitution of the Netherlands, on the one hand, and through Articles 93 and 94 Constitution of the Netherlands, the international human rights laid down in the conventions, on the other hand, become 'Kingdom's fundamental rights'. These 'federal' human rights supplement the fundamental rights incorporated in the Constitutions of the Caribbean countries. Thus, the international human rights are directly applicable in their domestic legal system.¹⁸⁰ Whether this line of thinking is sustained and acknowledged by other scholars could not be ascertained. Fundamental rights have to be guaranteed, strengthened and protected by all State and governmental agencies, including the Government of the Kingdom, following the Kingdom's structure under the Charter. As suggested by Camelia-Römer, a minimum level of living for all citizens of the Kingdom should be agreed upon and guaranteed by the Kingdom.¹⁸¹

176 Article 26 Constitution of Curaçao reads as follows: '*Het gezin wordt beschermd door de overheid. De overheid treft maatregelen ter bevordering van een gezond gezinsleven.*' Translation [by A.R.]: 'The family is protected by the Government. The Government takes measures to support a healthy family life.'

177 Explanatory Memorandum of the Constitution of Curaçao, pp. 21-22.

178 Article 27 Constitution of Curaçao reads as follows: '*De zorg van de overheid is gericht op de bescherming van jeugdigen en de bevordering van hun recht op onderwijs, culturele vorming, sport en vrijetijdsbesteding.*' Translation [by A.R.]: 'The concern of the Government is aimed at the protection of young people and the promotion of their right to education, cultural education, sport and leisure activities.'

179 Explanatory Memorandum of the Constitution of Curaçao, pp. 22-23.

180 Besselink 2002.

181 Camelia-Römer 2006, p. 166.

§ 6.9.1 *The safeguarding role of the Kingdom in the realisation of human rights:
Article 43 paragraph 2 Charter*

The national Government of Curaçao is the primary agency accountable for the rule of law, good governance, and the protection, promotion and fulfilment of human rights enshrined in the Constitution of Curaçao. This obligation is enshrined in Article 43 paragraph 1 Charter. However, the safeguarding of the effectuation of human rights in the countries following Article 43 paragraph 2 Charter¹⁸² is a Kingdom's affair. The provision states the following:

1. Each of the Countries shall promote the realisation of fundamental human rights and freedoms, legal certainty and good governance.
2. The safeguarding of such rights and freedoms, legal certainty and good governance shall be a Kingdom affair.

It is provided as a last resort to redress the malfunctioning of institutions in the countries (read: the Caribbean countries) by the Kingdom, when the former do not deal properly with the internal supervision mechanisms for redress. As a rather heavy supervision instrument it ought to be utilised only in exceptional cases where the principles of democracy and human rights are violated. Proper consideration has to be taken of the means available to the country before activating this serious measure. Simple negligence by a State-organ in the country concerned does not call for its use. Furthermore, the point of departure is that solutions for problems are first sought and imposed by the country. As a last resort, the employment of measures stemming from Article 43 paragraph 2 Charter should be effective and used within a well-delineated timeframe. This is the only specification related to its application, as the Charter does not set out guidelines for its usage. The instrument lacks any concrete mechanisms for its realisation. Effectively, the measures under Articles 50¹⁸³ and 51 Charter supply the required instruments. This underlines again the shortcomings of the Charter as a constitutional framework.¹⁸⁴ As far as the other shortcomings within the framework are concerned, they are commented on in § 6.10.

As of 2014, only on one occasion were measures under the regime of Article 43 paragraph 2 Charter applied by the Kingdom. This was after the disturbances of 30 May 1969. In their turn, the mechanisms under Articles 50 and 51 Charter have never been utilised for the purposes of redress. In the view of many people¹⁸⁵ precarious socio-

182 For the most recent assessment on the position of the Netherlands on the scope and regime of this provision, see Parliamentary report II 2010/11, 32 850, no. 2. For the new and progressive view of the Council of State of the Kingdom on the applicability of this norm see *Raad van State van het Koninkrijk, Voorlichting inzake een te ontwikkelen visie op het Koninkrijk, 5 September 2011 W04.11.0154/T*, paras. 24-25.

183 Connected to this provision are the supervision measures at the disposal of the Governor under Art. 20 and Art. 21 Rules of procedure of the Governor of Curaçao. Also Arts. 29 and 44 Charter qualify as (preventive) measures that can be used to effectuate the mechanism under Art. 43 para. 2 Charter. See Parliamentary report II 2010/11, 32 850, no. 2, p. 3.

184 Van Helsdingen 1957, pp. 482-519; Borman 2012, pp. 80-81; Van Rijn 2005, pp. 303-304.

185 Verton is one of the people who suggested that, considering the malpractices in the governmental sector, lack of integrity, the degree of negligence and deprivation among the population, corruption and political patronage, severe faults in the (then) governmental system, backwardness in the services available to the people, (social) inequality, the Kingdom had enough reasons to intervene in the internal affairs of the former Netherlands Antilles (read: Curaçao). In his view the (autonomous) governmental structure has failed the people, so the Kingdom had a responsibility to act and guarantee their basic necessities. See Verton 2002; Verton 2005. George held the same opinion in regard to the severe environmental infringements and public

economic and governmental circumstances would have justified their implementation on occasions. However, the reasoning behind the respect for the right to self-determination and the protection of the self-ruling powers of the Caribbean countries held the Kingdom back from taking action. Since the 1990s, the approach of the Government of the Kingdom, according to Borman, has been to effectuate its safeguarding role through the establishment of consultation and cooperation structures with the national Governments. In his view the Kingdom has a limited accountability under Article 43 paragraph 2 Charter. Hence, the provision does not create an autonomous norm for interference in the domestic affairs of the Caribbean countries. Arrangements are thus made by means of the legal measures that the countries should enact for the fulfilment of their duties. Support in all its variations can be provided by the Kingdom (read: the Netherlands) for compliance with this.¹⁸⁶

Van der Wal on the other hand states that in practice the willingness of the Kingdom (i.e. the Netherlands) to assist and cooperate with the Caribbean countries in certain matters, particularly prior to the constitutional reforms, came when it was held accountable on an international level.¹⁸⁷ So, the view of the Council of State of the Kingdom of 2004 that the obligations under Article 43 paragraph 2 Charter should be carried out by all the partners starting from a cooperation and support-based approach, particularly considering the fact that the Kingdom has been challenged about its responsibilities on an international level, accord with the views of this author. The international challenges were inter alia related to the disparity in the degree of realisation of human rights and the standard of living between the various inhabitants of the Kingdom.¹⁸⁸ Unfortunately, the Kingdom's (i.e. Dutch) Executive did not agree with the Council on this. It put forward the view that the Charter does not mandate uniform implementation of international agreements. In the Kingdom's Executive's view the implementation of a convention, including human rights conventions, is an autonomous affair. The stipulation of minimum standards in regard to the realisation of social human rights is seen as an unacceptable limitation of the autonomy of the countries, as policies are required for their implementation and this falls under the competence of the local agencies, whereas the stipulation of minimum standards for the guaranteeing of good governance was not.¹⁸⁹ Again, in 2006, the Council of State of the Kingdom stated in its advice that in the then new constitutional settings the concept of safeguarding 'good governance' under Article 43 paragraph 2 Charter also included the realisation of social security, proper education, public health and public finances, particularly for the small-scale Caribbean societies. It expressed the undesirability of a large disparity in facilities and benefits between countries within one constitutional structure. The setting-up of cooperation between Dutch and local governmental agencies with the objective of strengthening public services offered to the population, was proposed, together with adequate monitoring of and

health damage caused by the oil refinery. In his view the Kingdom has failed the local population by not taking action against the multi-nationals, including the Royal Dutch Shell Oil Company, which have operated this refinery. George 2003; see also Van Rijn 2005, pp. 304-305; Parliamentary report II 2010/11, 32 850, no. 2, p. 1; the same has been more or less suggested for the level of governance in Aruba by Warmelink. Warmelink 2005, p. 402.

186 Borman 2012, pp. 82-84.

187 Van der Wal 2005, p. 388.

188 'Raad van State van het Koninkrijk, Voorlichting inzake 50 jaar Raad van State voor het Koninkrijk, 10 december 2001, W04.04.0425/I/K', para. 2.

189 'Nader rapport (reactie op het advies) van 27 september 2005', paras. 2, 3 & 4 (Annex to W04.04.0425/I/K).

supervision mechanisms on its implementation.¹⁹⁰ In its advice for a long-term strategy for the Kingdom, the Council made the following remark:

*Concrete betekenis krijgt het Koninkrijksverband voor zijn burgers door “human development”. Het waarborgen van grondrechten, persoonlijke veiligheid, gezondheidszorg, armoedebestrijding en goed onderwijs moeten daartoe worden gerekend.*¹⁹¹

In a position paper of 2011 the Dutch cabinet affirmed the approach as posed by Borman on Article 43 Charter.¹⁹² Other authors like Broekhuijse also assumed this approach. In her view, for the safeguarding of (social) human rights under this mechanism, the approach for the policy measures should be directed towards effective cooperation between all the actors involved, and with the necessary consideration of and eye for cultural diversity, the social necessities and realities of the local population.¹⁹³ It is within this approach that I assume that the enactment of new legal measures, such as Article 27 paragraph 3 Charter, Article 26 consensus-Kingdom’s Act Financial Supervision and Article 52 consensus-Kingdom’s Act Police forces, was undertaken. Effectively, these measures containing supervision mechanisms enable interference by the (Council of Ministers of the) Kingdom in the internal affairs of the countries anyway.¹⁹⁴ Understandably, the new supervision norm under Article 27 Charter is to be seen as giving expression to Article 51 Charter, like Article 52 consensus-Kingdom’s Act Police forces where this is explicitly stipulated. Article 51 Charter is, in its turn, the effectuation mechanism for Article 43 paragraph 2 Charter. This ‘supreme’ supervision instrument implies major responsibilities for the Kingdom to act upon inadequate actions of governmental agencies at local level. Borman states further that this interpretation conflicts with the self-ruling authority of the Caribbean countries. He argues for the adaptation of the safeguarding provision in a future reform of the Charter. Intervention in the internal affairs of a country should then be contained and expressed in the coercive measures under Articles 50 and 51 Charter. Accordingly, further expansion or elaboration of a safeguarding norm enshrined in Article 43 paragraph 2 Charter is advised.¹⁹⁵

In his turn Verheij sees only two scenarios for the role that the Kingdom has to play under the new structure since 2010. The most relevant scenario¹⁹⁶ for this study relates to the obligations the Kingdom has under the Charter and international (human rights) law,

190 ‘Raad van State van het Koninkrijk, Voorlichting overeenkomstig artikel 18, tweede lid, van de Wet op de Raad van State inzake de hervorming van de staatkundige verhoudingen van de Antilliaanse eilanden binnen het Koninkrijk, 10 december 2006, W04.06.0204/1/K/A’, paras. 1.3 and 2.5.3.

191 Translation [by AR]: ‘The Kingdom’s structure obtains specific meaning for its citizens through “human development”. The guaranteeing of fundamental rights, personal security, public health, poverty reduction and proper education comes within this description’. Ibid., para. 5.1.

192 Parliamentary report II 2010/11, 32 850, no. 2, pp. 9-10.

193 Broekhuijse 2011, pp. 44-49.

194 See my elaboration in § 6.10; This view is confirmed in the letter of the Minister of Interior and Kingdom’s Affairs (R.H.A. Plasterk), to the President of the House of Representatives, ref. 2013-0000724368, 26 November 2013, p. 2.

195 Borman 2011, p. 30.

196 The other scenario is the gradual withdrawal of the Netherlands out of the Kingdom. The phasing out and discontinuation of the development aid programs underlined this approach. However, in my view with the introduction of the annual Kingdom’s conferences since 2010, where issues of mutual interests of the partners are discussed, the opposite is taken place. The involvement of the Netherlands and the cooperation between partners is per 2014 still present. See ‘Conclusies van de Koninkrijksconferentie van 2 april 2014 te Aruba.’

which implies assuming a stronger responsibility and accountability for the creation or strengthening of the level of services and facilities directed at ensuring wellbeing in the Caribbean countries, through the mechanism in Article 43 paragraph 2 Charter. In this context a broad approach to the concept of ‘fundamental rights and freedoms’ is justified for the realisation of social rights, like education, healthcare and social and economic security. In Verheij’s view the approach of the Kingdom in the dispute with Aruba over the Common Court of Justice suggests that this interpretation cannot be excluded. Nonetheless, resistance in the Caribbean countries and the changes of view in the Netherlands itself make the implementation of Article 43 paragraph 2 Charter most unlikely.¹⁹⁷ In its turn, the approach of the Council of State of the Kingdom of 2011, starts from a more dynamic interpretation of the article.¹⁹⁸ The Council sees the development of a common balance between the partners as a stimulus for the setting-up of a minimum level for the realisation of the values enshrined in Article 43 paragraph 2 Charter, thus including fundamental rights and freedoms. With the installation of a committee in charge of conducting periodical audits and visitations in the Caribbean countries, evaluations of the realisation of a minimum level of standard will be carried out. From a precautionary approach stemming from these reports, together with the enforcement of Articles 36 and 37 Charter, more effective cooperation arrangements can be achieved, according to this Council.¹⁹⁹ By 2014 the Executives of the countries seemed to embrace this approach, which was shown by the attention paid to the issue of the protection of children’s rights²⁰⁰ during the Kingdom’s conference, among the other areas of interest where mutual cooperation and assistance were encouraged. Following the decision taken during this conference, a taskforce was installed to draw up a plan of action for an effective cooperation setting benefiting the effectuation of children’s rights under the Children’s convention at the domestic level.²⁰¹

§ 6.9.2 *Fundamental rights in international conventions applicable in Curaçao*

As well as the domestic (legal) framework on fundamental rights and freedoms, international human rights conventions are also implemented in Curaçao. The international Convention on Civil and Political Rights²⁰² and the European Convention on Human Rights²⁰³ have been the most effective conventions in the protection provided to the inhabitants. However, there

197 Verheij 2010, pp. 306-307; see also ‘Raad van State van het Koninkrijk, Voorlichting inzake een te ontwikkelen visie op het Koninkrijk, 5 September 2011 W04.11.0154/I’, para. 2.3.

198 In 2005 Sybesma had already suggested such an approach for the protection of the environment, seeing the lack of effective national legislation and enforcement in Curaçao on the matter. Moreover, in his view protection of the environment should become a Kingdom’s matter under Art. 3 Charter or regulated under Art. 38 Charter. Sybesma 2005.

199 See ‘Raad van State van het Koninkrijk, Voorlichting inzake een te ontwikkelen visie op het Koninkrijk, 5 September 2011, W04.11.0154/I’, para. 2.5.

200 I have to note though that this action was the result of the subsequent UNICEF reports of 2013 on the status of the protection system regarding children’s rights in the Caribbean countries. For the findings for Curaçao see ‘The situation of children and adolescents in Curaçao’, United Nations Children’s Fund (UNICEF) 2013. All the reports are available on www.unicef.nl/wat-doet-unicef/koninkrijkskinderen.

201 ‘Conclusies van de Koninkrijksconferentie van 2 april 2014 te Aruba’, para. V; Letter Minister Interior Affairs and Kingdom’s relations (R.H.A. Plasterk) to the President of the House of Representatives, ref. 2014-0000206618, topic: ‘Verslag Koninkrijksconferentie 2014’, 15 April 2014, p. 2.

202 It came into force in the Kingdom on 23 March 1976 (Trb. 1969, no. 99; Trb. 1978, no. 177 (revised version)).

203 It came into force in the Kingdom on 31 August 1954 (Trb. 1951, no. 154).

are many other conventions, such as the Women's Convention, that are applicable and are of great importance for any further development and protection system.

What one ought to bear in mind is that international human rights conventions to which the Kingdom is party, are equally applicable in the countries which form this 'federal state' as the nature of these conventions does not allow them to be binding in only certain parts of the federal States.²⁰⁴ Furthermore, Article 29 Vienna Convention explicitly prescribes that if a convention does not stipulate otherwise, the agreement has binding force in the entire territory of the State. States also have an obligation under Article 26 Vienna Convention to implement in good faith in their domestic (legal) systems obligations set out in conventions. The European Convention on Human Rights, for instance, as a regional convention should only be binding for the Netherlands as a member of the Council of Europe.²⁰⁵ However, this European convention²⁰⁶ is also enforceable in the Caribbean countries based on the so-called territorial application clauses laid down in Article 1 and Article 56 ECHR. Article 1 ECHR stipulates that the State-party to the Convention has an obligation to secure the rights and freedoms of everyone within its jurisdiction, which entails an obligation for the State that is not limited to inhabitants with the nationality of the State concerned. Every person subject to the jurisdiction of a State-member is entitled to protection of his or her most fundamental rights. Moreover, Article 56 ECHR prescribes that the European Convention on Human Rights is also applicable to those territories for whose international relations the State-party is responsible. As the Kingdom is responsible for the foreign relations of the Caribbean countries, pursuant to Article 3 paragraph 1 sub b Charter, its application in the West is based on this legal construct.²⁰⁷ The protection it provides to the inhabitants through its effective implementation mechanisms is indispensable. For the revised European Social Charter²⁰⁸ this issue is guaranteed in Article L, paragraph 2. Only a few provisions²⁰⁹ set out in this regional convention apply in the legal system of Curaçao though.

§ 6.10 Elements exhibiting shortcomings in the Kingdom's structure

Although this study does not require an extensive elaboration on the shortcomings in the Kingdom's structure and on the content and background of the enacted consensus-Kingdom's Acts, I have included some remarks on these matters considering that firstly these Acts constitute governmental institutions essential for the national protection system of Curaçao and secondly, the shortcomings in the Kingdom's structure do affect the accountability of State-agencies at Kingdom's level for the implementation of international (human rights) law at country level. Since 2010 consensus-Kingdom's Acts under Article 38 paragraph 2 Charter and Mutual Agreements under Article 38 paragraph 1 Charter reveal the further involvement and voice of the Kingdom in the internal affairs of Curaçao. Moreover, with the enactment of these rulings starting from a cooperation and support approach more

204 See e.g. Art. 50 ICCPR on the applicability of the International Convention on Civil and Political Rights (ICCPR) in the Kingdom.

205 For extensive information on the working of the ECHR, see Van Dijk e.a. (eds.) 2006.

206 This also includes its Protocols which contain additional provisions of the ECHR.

207 Van Dijk e.a. (eds.) 2006, pp. 13-19.

208 The revised Charter of 1996 came into force in 1999. It came into force in the Netherlands in 2006 (Trb. 2004, no. 13).

209 It concerns e.g. Arts. 1, 5, 6 and 16 ESC 1961 and Art. 1 of the 1988 Additional Protocol.

collaboration and interaction between the countries has been effectuated. In my view the same approach could apply for a more effective realisation of international human rights law benefiting the development of the most vulnerable groups in Curaçaoan society. Article 38 Charter lays down the following:

1. The Netherlands, Aruba, Curaçao and Sint Maarten may enter into mutual arrangements.
2. They may decide by common consent that such arrangements and the modification thereof shall be laid down by Kingdom Act of Order in Council of the Kingdom.
3. Private law and criminal law matters of an interregional or international nature may be regulated by Kingdom Act, provided that the Governments of the Countries concerned agree to the provisions thereof.
4. Provision for the transfer of the registered offices of legal persons shall be made by Kingdom Act. Such provision must be approved by the Governments of the Countries.

Regardless of the fact that the Charter was established to emphasise and secure the self-ruling of former Dutch colonies, the Kingdom's structure lacks in many respects clear-cut mechanisms safeguarding the participation of the Caribbean countries in decision-making processes, for cases of disputes between the countries, and on the execution of the supervision powers²¹⁰ by the Kingdom. With the adoption of the consensus-Kingdom's Acts of 2010 a new dimension has been added. All this influences (in)directly the accountability of State-agencies in the ensuring of good governance and international human rights law at both Kingdom and domestic level. An example of this is the identified lack of democratic and monitoring mechanisms. The convergence between Dutch and Kingdom's organs and subsequently the supremacy of the Netherlands, the absence of a Kingdom's Parliament, a constitutional court or an independent dispute resolution institution, a lack of well-delineated procedures for the enactment of consensus-Kingdom's Acts as experienced during the process of the restructuring of the constitution, are some of the other elements in which the weakness of the 'quasi-federal' structure as instituted by the Charter is revealed according to scholars.²¹¹ I substantiate these observations below, mirrored against the view favouring the strengthening of the national human rights-based protection system and the accountability of all State-agencies involved.

In short, all the previously mentioned elements undermine in one way or the other the realisation of real equality among the partners.²¹² In addition, the unequal power relations, exhibited in the supremacy of Dutch State-organs in the Kingdom's organs, underline the lack of influence and voice of the Caribbean countries in the decision-making processes

210 The issue of supervision and safeguarding powers of the Kingdom is addressed in § 6.9.1.

211 See e.g. Van der Wal 2005; Camelia-Römer 2006; Wit 2007; Croes 2007; Kummeling 2007; Nehmelman 2009, pp. 44-46; Qoubbane 2010; Hoogers 2010 (a); Van Dijk 2010; Hoogers 2010 (b); Verheij 2010; Bovend'Eert 2011, pp. 33-36; Borman 2011, p. 27; Besselink 2011, pp. 4-7; Hillebrink 2011; Broekhuijse 2011, pp. 41-42, 45; Borman 2012; Broekhuijse 2012 (a), pp. 60-62.

212 In a report of 2009 the democratic shortcomings of the Kingdom's structures were analysed. Several suggestions were made for improvements in the democratic mechanisms at Kingdom's level. See '*Kiezen voor het Koninkrijk: Democratische legitimiteit van besluitvorming en controle op koninkrijksniveau*', Rapport van de Commissie Democratisch deficit, 11 November 2009, pp. 3-6; see also e.g. '*Nu kan het nu moet het: The time is now, let's do it! Awor por, ban pè!*', Advies werkgroep Bestuurlijke en Financieel verhoudingen Nederlandse Antillen', 8 October 2004; De Werd 1997, p. 1852; Van Rijn 2004 (b), p. 277; Camelia-Römer 2006, pp. 157, 159-161, 165-168; Borman 2011, p. 30; Besselink 2011, pp. 3-4, 6.

at the Kingdom's level.²¹³ Furthermore, since 2010 the inequality in position and power-relations between the states has grown further.²¹⁴ Some shortcomings are shortly commented on in the following sub-paragraph for a better overall picture.

§ 6.10.1 *A Parliament for the Kingdom: some views on the matter*

Authors like Croes²¹⁵ have criticised the absence of a Kingdom's Parliament, directly chosen by all inhabitants of the countries, with the powers and legitimacy to enact Kingdom's Acts and supervise the actions of the Kingdom's Executive for matters that concern the Caribbean countries, in an effective system of checks and balances. Their arguments favour the creation of a Parliament for the Kingdom chosen by all the inhabitants of the Kingdom; an institution which sees to Kingdom's affairs.

In practice, it is the States-General that monitors the actions of the Kingdom's Executive, starting from its powers as a Dutch State-agency pursuant to Dutch constitutional law,²¹⁶ leading to the inevitable confusion in the execution of its authority in this sense as, in many cases, its members consider that they have the power to address matters that fall under the internal authority of the Caribbean countries, as pointed out by Broekhuijse.²¹⁷ Others like Kummeling, however, are of the view that, although the current structure is in many ways to the disadvantage of the Caribbean countries, by granting voting rights to all the inhabitants for the States-General the chosen representatives from the Caribbean countries would be outnumbered and consequently have less voice. Another objection is that Caribbean representatives would have a say in policy measures that only concern the Netherlands. Furthermore, the local population is already represented by its own Parliament.²¹⁸ He puts forward other ways by which the checks and balances within the Kingdom could be strengthened. In regard to the increase of the voice of the Caribbean countries in the Dutch (i.e. Kingdom's) Parliament, he proposes the inclusion of a norm in the Charter which prescribes that a number of appointed local representatives, with voting rights, would participate in the debates of the 'Kingdom's legislature'.²¹⁹ In its turn, the Council of State of the Kingdom considers, in its advice of 2011, that additional adaptation in the constitutional setting of the Kingdom, including the setting-up of a Kingdom's Parliament, was not necessary after the reforms of 2010.²²⁰

§ 6.10.2 *Constitutional court or independent dispute resolution institution at Kingdom's level*

Unlike other federal States where a constitutional court supervises the power division and competence between the federal Government and the various states, the Kingdom has not as

213 For example, consider the mechanisms under Arts. 16-18 Charter; see De Werd 1998, p. 1872.

214 Van Rijn 2010 (b).

215 Croes 2007, pp. 62-65; see also Van der Wal 2005, p. 392; Camelia-Römer 2006, pp. 160, 166.

216 These powers are grounded in inter alia Arts. 68-70 Constitution of the Netherlands.

217 Broekhuijse 2012, pp. 57-69.

218 Kummeling 2007, pp. 69-70.

219 Ibid., p. 71.

220 'Raad van State van het Koninkrijk, Voorlichting inzake een te ontwikkelen visie op het Koninkrijk, 5 September 2011, W04.11.0154/T, paras. 1.2 and 3.1.

yet instituted such a mechanism. Up until 2010 disputes about the exercise of powers by the Kingdom, the interpretation of the Charter, and between the countries were addressed solely through the mechanism under Article 12 paragraphs 2 to 4 Charter. These mechanisms make permissible further deliberation upon the explicit request of a Minister Plenipotentiary. This Minister has to declare that his country has serious objections to the binding force of legal measures proposed by the Council of Ministers, under Article 12 paragraph 1 Charter, or to any other matter. In the so-called “continued deliberations” the Dutch Ministers, acting as Kingdom’s Ministers, have the upper hand, bearing in mind that, pursuant to its paragraph 3, three Dutch Ministers, including the Dutch Prime Minister, the Minister Plenipotentiary and a Minister or representative of the country, participate. As a consequence, the Minister(s) plenipotentiary can be outvoted by the majority of the participating Dutch Ministers. The inequality inherent in this legal construct effectively means imbalances in decision-making powers between the countries, particularly between the country of the Netherlands on the one hand and the Caribbean countries on the other hand. Hence, it has only been utilised on a few occasions to date.

Many people claim that the *Suiker & Rijst* affair of 1997 was one of those occasions. In that year a dispute arose between the countries within the Kingdom on the adoption by the Netherlands of the then proposed amendments of an OCT²²¹ decision by the European Commission. The objective of these measures was to protect agricultural products of European Union members against products imported from inter alia Aruba and the former Netherlands Antilles. It was predicted that the then EU proposals would have devastating economic and financial consequences for the Caribbean countries, if the Netherlands agreed to them. As territories overseas with a special (constitutional) relationship with a member of the Union (read: the Netherlands), these Caribbean countries enjoyed special arrangements with the European Union. Court cases firstly brought by an Aruban company and later supported by the Government of the former Netherlands Antilles, about the interpretation and applicability of Article 25 Charter followed, and went to the European Court of Justice. As already pointed out, according to this provision the Caribbean countries have the right to veto the termination of an international agreement by the Kingdom.²²² Eventually, the dispute concluded with the use of the mechanism under Article 12 Charter when, after further deliberation, the point of view and interests of the Netherlands prevailed and that country subsequently agreed with the amendments of the OCT decision to the disadvantage of the Caribbean countries.²²³ Both Besselink and Hillebrink question whether the mechanism under Article 12 Charter was (correctly) applied, as the Ministers Plenipotentiary were not present during the deliberation. Besselink goes even further by stating that the Dutch Executive violated the Charter with its actions.²²⁴

Another incident occurred during the process of the constitutional reforms. The employment of Article 12 Charter in the dispute between Aruba and the Kingdom on the central location for the Common Court of Justice, illustrates its ineffectiveness as a dispute

221 ‘OCT’ stands for Overseas Countries and Territories. The Caribbean countries fall under special arrangements as OCTs, pursuant to Arts. 198-203, particularly Art. 203 EC Treaty.

222 For more details on the scope of Art. 25 Charter see § 6.3.

223 See e.g. Besselink 1998, pp. 1291-1296; Van der Wal 2005, p. 389; Van Rijn 2010 (a), pp. 108-109; Hillebrink 2011, pp. 51-58; Borman 2012, pp. 148-151; Saleh 2012, pp. 188-190.

224 Furthermore, the ‘further deliberations’ took place by phone with the Ministers presidents of the Caribbean countries without the Ministers Plenipotentiary as prescribed. Besselink 1998, p. 1296; Hillebrink 2011, p. 53.

settlement mechanism. Aruba aspired to become the central location of the Common Court of Justice of the Caribbean countries, and as this was not considered to be feasible the partners were unable to reach the required consensus. The choice of the Executive of the Kingdom to use Article 43 paragraph 2 Charter as the legal basis for the adoption of the Kingdom's Act on the Common Court of Justice for Aruba, was considered to be unacceptable for this Caribbean country, a position which was supported by the former Netherlands Antilles. In the application of the ruling under Article 12 Charter further deliberations were held at very short notice, and consequently the countries were overruled.²²⁵

As van Dijk remarked, the use of this instrument for the accomplishment of an agreement based on consensus, was highly unusual. Come what may, the Netherlands wanted to impose the enactment of this consensus-Kingdom's Act on Aruba pursuant to Article 43 paragraph 2 Charter²²⁶ instead of Article 38 paragraph 2 Charter. In its (i.e. Kingdom's Executive) view this was necessary as, with the non-participation of Aruba, the ensuring of an adequate judicial system would have been endangered, which meant the impairing of legal certainty and good governance, pursuant to Article 43 paragraph 2 Charter. This would have meant that two countries would have been bound to the law by consensus pursuant to Article 38 paragraph 2 Charter, and one country would have been bound by the coercive measure under Article 43 Charter.²²⁷ Finally, the situation was settled with Aruba agreeing with this consensus-Kingdom's Act after reaching an agreement on the siting of the Common Court of Justice in Curaçao.²²⁸

As a solution to such problems in the future, the establishment of dispute arrangements came about. With the adoption of Article 12a Charter,²²⁹ a legal basis was created for the setting up of a dispute resolution institution to adjudicate on disputes between the Kingdom and the Caribbean countries.²³⁰ This institution is to be established by a Kingdom's Act, thus by a law that has to be enacted by Dutch constitutional organs acting as Kingdom's agencies. As of May 2014, this Act had not been enacted. There seem to be major points of difference about its set up among the partners in the Kingdom. For instance, in its advice of 2011 the Council of State of the Kingdom advised against the setting up of an institution with

225 The deliberations took place on the same day on which the announcement was made. As a consequence the Ministers Plenipotentiary did not have the opportunity to consult their respective Executives. Neither did the local Executives have the opportunity to conduct an assessment of the issue. Broekhuijse 2012 (b), pp. 116, 167.

226 For an elaboration on the working of this supervision instrument see § 6.9.1.

227 Hoogers 2010 (a), pp. 278-279; Van Dijk 2010, pp. 325-327.

228 This is the only consensus-Kingdom's Act which is valid for Aruba. The other four main Kingdom's Acts are solely applicable to Curaçao and Sint Maarten.

229 Article 12a Charter reads as follows: '*Bij Rijkswet worden voorzieningen getroffen voor de behandeling van bij Rijkswet aangewezen geschillen tussen het Koninkrijk en de landen.*' Translation [by A.R.]: 'By Kingdom's Act measures will be taken for the consideration of disputes appointed by Kingdom's Act, between the Kingdom and the countries.'

230 In an article Hoogers gave details on the background for the adoption of this norm. The Council of State of the Kingdom presented an advice on the content of the draft Kingdom's Act in 2010 (W03.10.0370/K). In the Council's advice of 2011, containing a view on the Kingdom, it is noted that it had presented the advice to the Executive, but that it had not been published by then. Unfortunately, I was not able to retrieve it on its website www.raadvanstate.nl, last visited on 15 April 2015. Hoogers suggests, based on a presentation of the then vice-president of the Council, that the advice submitted to the Kingdom's Executive would probably uphold a procedure following the one enshrined in the Kingdom's Act on Financial supervision (Art. 26). He had, overall, a critical take on this approach. I was not able to confirm or dismiss Hoogers's thesis. See '*Raad van State van het Koninkrijk, Voorlichting inzake een te ontwikkelen visie op het Koninkrijk, 5 September 2011, W04.11.0154/I*', para. 3.1; Hoogers 2011, pp. 91-98.

powers to review Kingdom's Acts on the Charter based on inter alia the norm under Article 120 Constitution of the Netherlands.²³¹ Not surprisingly, bearing all the above in mind, the Caribbean countries, during the Kingdom's conference of 2014,²³² expressed their desire to set up an independent institution with the power to pronounce binding decisions on the interpretation of the Charter and which could review decisions of Kingdom's agencies, including the consensus-Kingdom's Acts.²³³ With the following comment Besselink puts things perfectly into perspective:

*De algemene ervaring leert dat Nederland niet houdt van formele regeling van een geschillenbeslechtingsprocedure tussen overheden. De meer specifieke ervaring met artikel 49 Statuut leert dat Nederland al helemaal niet houdt van een juridische regeling waarin een rol aan de rechter wordt toegedacht. Verwacht mag worden dat Nederland het op de feitelijke machtsverhoudingen zal blijven laten aankomen als zich conflicten voordoen.*²³⁴

Another new arrangement is the one under Article 38a Charter.²³⁵ This provides a basis for the setting up of a dispute resolution institution by mutual arrangement to resolve disputes between the countries. Thus, the setting up of such an institution is optional, and not mandatory. According to Borman, these two provisions, together with the new norms under Article 27 Charter,²³⁶ were not innovations resulting from the negotiations on the constitutional restructuring and from the acquisition of an 'autonomous' status by Curaçao (and Sint Maarten) in 2010, but merely corrections of the Kingdom's structure.²³⁷

§ 6.10.3 *Inequality in decision-making powers: the consensus-Kingdom's Acts under Article 38 paragraph 2 Charter*

With the establishment of the consensus-Kingdom's Acts in 2010, parts of the domestic constitutional settings of Curaçao, like the judicial powers and public prosecution services,

231 In 2006 the Council of State of the Kingdom expressed its preference for the application of the already existing procedure of Crown Appeal for the (former) Netherlands Antilles, where the Council of State of the Kingdom can issue independent advice in cases of dispute. See 'Raad van State van het Koninkrijk, Voorlichting overeenkomstig artikel 18, tweede lid, van de Wet op de Raad van State inzake de hervorming van de staatkundige verhoudingen van de Antilliaanse eilanden binnen het Koninkrijk, 10 december 2006, W04.06.0204/1/K/A', para. 5.3; 'Raad van State van het Koninkrijk, Voorlichting inzake een te ontwikkelen visie op het Koninkrijk, 5 September 2011, W04.11.0154/T', para. 3.2 sub d.

232 Since 2010 an annual Kingdom's conference between the Governments has been established. Borman 2012, p. 94; 'Conclusies van de Koninkrijksconferentie van 2 april 2014 te Aruba'.

233 'Conclusies van de Koninkrijksconferentie van 2 april 2014 te Aruba', para. VI sub d; Letter Minister Interior Affairs and Kingdom's relations (R.H.A. Plasterk) to the President of the House of Representatives, ref. 2014-0000206618, topic: 'Verslag Koninkrijksconferentie 2014', 15 April 2014, p. 6.

234 Translation [by A.R.]: 'General experience learns that the Netherlands does not like official rules for dispute resolution procedures between governmental authorities. More specific experience with Art. 49 Charter learns that the Netherlands likes even less legal rulings where a role is assigned to the judiciary. It might be expected that the Netherlands will let things come to the actual balance of power when disputes occur.' Besselink 2011, p. 4.

235 Article 38a Charter states: 'De landen kunnen bij onderlinge regeling voorzieningen treffen voor de behandeling van onderlinge geschillen. Het tweede lid van artikel 38 is van toepassing.' Translation [by A.R.]: 'The countries may by mutual arrangements convene measures for the handling of disputes amongst them. Paragraph two of Article 38 is applicable.'

236 See for more details § 6.3.1.1.

237 Borman 2011, p. 27.

are presently grounded in Kingdom's legislation and not (entirely) in country laws.²³⁸ As a matter of fact, the provisions on these organs incorporated in the Constitution of Curaçao²³⁹ have no real meaning, as they are abrogated by the Kingdom's regulations on the Common Court of Justice and public prosecution services, which are of higher ranking and are seen as the legal basis for the setting up of these institutions. And as strange it may sound, the Common Court of Justice, based on its Kingdom's Act, is not a State-agency of Curaçao or of any of the Caribbean countries for that matter. As a result of its newly acquired independent legal position it merely caters for the judicial system of these countries.²⁴⁰

It was through the use of the mechanism under Article 38 paragraph 2 Charter that the setting down of internal matters in Kingdom's regulations, based on mutual consent, was effectuated.²⁴¹ Pursuant to paragraph 1 of Article 38 Charter the countries are legally permitted to conclude mutual agreements. Through mutual agreement it is decided in which form this should take place, meaning by Kingdom's Act or Kingdom's Order in Council, following Article 38 paragraph 2 Charter. All this means that the measure should be based on consensus or mutually agreed upon by all the parties involved. Seen from a legal standpoint, the use of this mechanism is, as stated by Römer, merely the seizing of an opportunity created by the Charter; thus the Caribbean countries put their right to autonomy herewith to a good use. Furthermore, in the opinion of Römer this regime can also be utilised to introduce legal measures for the realisation of a minimum level of life benefiting the population in areas like education and public health care.²⁴² The same suggestion had already been made by the Council of State of the Kingdom in 2004, as a way to guarantee and fulfil fundamental rights.²⁴³

However, according to Verheij, when taking account of the whole process leading to the adoption of the consensus-Kingdom's Acts, one can say that '*De ervaring is derhalve dat de consensusrijkswetten niet werkelijk op "consensus" zijn gebaseerd.*'²⁴⁴ So, one cannot speak of real consensus between the partners in regard to these Kingdom's Acts. Moreover, following Bovend'Eert, with the enactment of these instruments a major turning point within the

238 As well as the five most well-known consensus-Kingdom's Acts, numerous other Orders in Council for the Kingdom were adopted. An example is the Order in Council for the Kingdom on the legal position of the Common Court of Justice (Stb. 2010, no. 358), which is a detailed ruling as mandated in Art. 39 Kingdom's Act on the Common Court. Van Dijk 2010, pp. 323-324.

239 See Chapter 7 (Arts. 97-109) of the Constitution on the judicial power and the Public prosecution services. Article 98 para. 5 Constitution of Curaçao refers to the 'possibility' of the adoption of a mutual agreement between the countries within the Kingdom for the judiciary system, pursuant to Art. 38 para. 2 Charter. Thus, this was not mandatory. Yet, the local norm is followed by provisions regulating the powers of the judiciary and the public prosecution services, with or without reference to Art. 98 para. 5 Constitution of Curaçao. In his contribution on the then draft of the Constitution, Hoogers suggested the non-adoption of this chapter altogether, as a reference to the Kingdom's Act concerned would have sufficed. Hoogers 2010 (a), p. 270.

240 For more extensive observations on the structure of the Common Court of Justice and the pitfalls related to it see e.g. Bovend'Eert 2008; Hoogers 2010 (a), pp. 279-285; Hoogers 2011 (c), pp. 80-81.

241 The recommendation to apply Art. 38 Charter as a way to ensure more cooperation between the countries in the field of the administration of justice and of law enforcement was initially made by the Council of State of the Kingdom in 2004. '*Raad van State van het Koninkrijk, Voorlichting inzake 50 jaar Raad van State voor het Koninkrijk, 10 december 2001, W04.04.0425/I/K*', para. 4; see also Van Dijk 2010; Verheij 2010.

242 Römer 2011, pp. 168-169, 178-179.

243 '*Raad van State van het Koninkrijk, Voorlichting inzake 50 jaar Raad van State voor het Koninkrijk, 10 december 2001, W04.04.0425/I/K*', para. 4.

244 Translation [by A.R.]: 'The experience is consequently that the consensus-Kingdom's laws are not really based on "consensus".' Verheij 2010, p. 297.

Kingdom has been reached, as they effectuate further involvement of the Kingdom's Executive in internal affairs of the islands and they contradict and do not justify the derogation from the essence of self-rule of the Caribbean countries as put forward in the Charter. He puts it as follows: '*Op basis van deze consensusrijkswetten*²⁴⁵ *is de zeggenschap van Koninkrijksambten over aangelegenheden van de autonome landen echter onder omstandigheden vergaand*'.²⁴⁶ Verheij seems to concur with him.²⁴⁷ Hoogers denominates this upward delegation of legislative powers as 'unique' for federal legal systems.²⁴⁸

Another point worth noting is the shortcomings exhibited during the drafting and the adoption procedure of the consensus-Kingdom's Acts,²⁴⁹ as the Charter does not provide for procedural norms on their enactment.²⁵⁰ Subsequently, the procedures delineated for mandatory Kingdom's Acts, pursuant to Article 3 Charter, were applied. This brought major challenges with it, as the mutual consent had to be guaranteed at all stages and in all aspects²⁵¹ of the enactment of these Acts. Effectively, the mechanism under Article 16 Charter only gave the Parliaments of the Caribbean countries²⁵² a marginal role during the enactment process. The Ministers Plenipotentiary and special representatives, following Article 18 paragraph 1 Charter, expressed their views during the debates of the States-General, but they did not have voting rights. Only the members of the States-General voted on the enactment of these Acts.²⁵³ In her study Broekhuijse exposed many faults in this procedure, which jeopardises

245 It concerns the Kingdom's Acts on Financial supervision (Stb. 2010, no. 334), on the Public Prosecution Service (Stb. 2010, no. 336), and on the Police forces (Stb. 2010, no. 337).

246 Translation [by A.R.]: 'Based on these consensus Kingdom's Acts the voice of Kingdom's offices on affairs of the autonomous countries is however far-reaching.' Bovend'Eert 2011, p. 36; also De Jong and Verheij uphold this opinion. De Jong 2009; Verheij 2010.

247 Verheij 2010, pp. 297-298; see also Römer 2011, pp. 178-179.

248 Hoogers 2011 (c), p. 75.

249 Broekhuijse mentioned in her study the fact that Kingdom's Acts are actually drafted by Dutch public servants. More so than in previous Kingdom's Acts, where the input of the Caribbean governmental agencies was deficient or even absent, there was more involvement and participation by the Caribbean countries during the enactment of the ten Kingdom's Acts of 2010. In spite this, due to the lack of capacity, the local public servants had insufficient time and space to comment upon the draft Acts properly. Broekhuijse 2012 (b), pp. 108-110, 161-165, 191-200; see also Nehmelman 2009, pp. 44-46; Van Dijk 2010, pp. 324-326.

250 Several legal and procedural shortcomings and practical pitfalls were identified. One noteworthy issue was the short time period in which they had to be drafted, commented on by the governmental agencies involved and debated in the House of Representatives. Effectively, ten Kingdom's Acts were passed by the House in less than a week. Another issue was the different views of Antillean and Dutch politicians on the acceptability of amendments to the Acts by Dutch members of Parliament during the debates, which could have eliminated the consensus reached. See Bense & Pronk 2010, pp. 63-64; Qoubbanne 2010; Van Dijk 2010; Hoogers 2011 (c), pp. 74-79; Broekhuijse 2012 (b), pp. 191-229.

251 By this I mean that the mutual consent reached between the parties applied for the form and the content of the law. This has to be secured at all times; otherwise, the enactment of the Acts, and consequently the entire process of restructuring, could have been endangered. An example of this is provided by the situation where the Advisory Board of Curaçao in 2009 remarked that mutual consensus on the then draft consensus-Kingdom's law on the public prosecution services had not been reached as it was not certain that Curaçao (and Sint Maarten) had agreed to the Act. RvA no. RA/05A-09-RW. See also e.g. Van der Woude 2007 (b), p. 264; Van Dijk 2010; pp. 323; 328-330; Qoubbane 2010, pp. 149-150; Hoogers 2011 (c), p. 76; Borman 2012, pp. 186-188; Broekhuijse 2012 (b), pp. 72-81.

252 By this I mean the Parliaments of the former Netherlands Antilles and Aruba and not the then island territories of Curaçao and Sint Maarten.

253 The members of the House of Representatives, contrary to the agreements, submitted amendments to these Kingdom's Acts, although the amendments were kept to a minimum. See e.g. Van Dijk 2010, pp. 328-331; Verheij 2010, p. 295; Borman 2012, pp. 187.

the realisation of equality between the countries within the Kingdom.²⁵⁴ All this lays bare the weakness and contradiction within the structure.

Lastly, the absence, at present, of a unilateral termination clause in the consensus-Kingdom's Acts facilitating the exit from these Acts by Curaçao is a major point of discussion.²⁵⁵ It will be just after the evaluation of the Kingdom's Acts on the administration of justice and law enforcement in 2015 that it will be decided, but only by mutual consent,²⁵⁶ whether the respective Acts will be terminated or prolonged.²⁵⁷ In effect, the mutual consent requirement in the rulings concerned acts as a restriction on the decision-making authority of Curaçao. It undermines the commonality of consent, pursuant to Article 38 paragraph 2 Charter, which was necessary for their enactment in the first place, as argued by both Quobbane and van Dijk.²⁵⁸ This was also the position of the Advisory Board of Curaçao back in 2009.²⁵⁹ I withhold further remarks on this topic, bearing in mind the main focus of this study.

So, not surprisingly, many recommendations²⁶⁰ were made for the revision of the Charter in reports and academic contributions, with the objective of eliminating (some of) the above identified shortcomings within the structure. Yet, as of today, many of these recommendations have not been introduced. Moreover, unlike Aruba in 2010²⁶¹ and the

254 See Broekhuijse 2012.

255 'Conclusies van de Koninkrijksconferentie van 2 april 2014 te Aruba', para. VI sub b; Letter Minister Interior Affairs and Kingdom's relations (R.H.A. Plasterk) to the President of the House of Representatives, ref. 2014-0000206618, topic: 'Verslag Koninkrijksconferentie 2014', 15 April 2014, p. 4.

256 In three Acts the possibility of termination under mutual consent has been instituted. See e.g. Art. 41 para. 2 Kingdom's Act on Public Prosecution Service; Art. 56 para. 2 Kingdom's Act on Police Forces; Art. 43 para. 2 Kingdom's Act on the Council of law enforcement. The Kingdom's Act on Common Court of Justice is also going to be submitted to an evaluation in 2015, pursuant to its Art. 65. Yet, the exclusion of a termination clause suggests a permanent character for this ruling. Regarding the Kingdom's Act on Financial Supervision, it is stipulated in Art. 33 that the Council of Ministers of the Kingdom decides through an Order in Council for the Kingdom, after a possible evaluation, whether the Act will be partly prolonged or not. An extensive procedure (13 paras.) is incorporated in this provision for this purpose.

257 For details of the framework for the evaluation see e.g. 'Raad van State van het Koninkrijk, No.W03.14.0046/II/Vo/K/B'; 'Raad van State van het Koninkrijk, No.W03.14.0046/II/Vo/K/B'; Letter acting Minister of Interior Affairs and Kingdom's relations (S.A. Blok) to the President of the House of Representatives, ref. 2013-0000709706, 18 November 2013.

258 Quobbane 2010, p. 159; Van Dijk 2010, p. 333; Hoogers 2011 (c), p. 83; Römer 2011, pp. 180-181.

259 RvA no. RA/05A-09-RW, para. 5.

260 Many sources mention that a new view on the Kingdom was presented in a report of 1993. In this report entitled 'Proeve van een vernieuwd Statuut' recommendations for a revised Charter were put forward. I was not able to retrieve it, as it has not been officially published. The recommendations seem to include, inter alia, the elimination of the 'interweaving' between the Charter and the Dutch Constitution; a new delineation of Kingdom's affairs; the reform of the composition of the Kingdom's Council of Ministers; the approval by the Parliament of a Caribbean country when concluded conventions only apply to it; the introduction of improvements in the parliamentary function. See e.g. Borman 2011, p. 30; see also Lourens 2004, p. 12; Van der Wal 2005, p. 394; Camelia-Römer 2006, pp. 165-168; Kummeling 2007, pp. 70-71; Besselink 2011, pp. 3-4, 6; 'Kiezen voor het Koninkrijk: Democratische legitimiteit van besluitvorming en controle op koninkrijksniveau', Rapport van de Commissie Democratisch deficit, 11 November 2009; 'Nu kan het nu moet het: The time is now, let's do it! Awor por, ban pè!', Advies werkgroep Bestuurlijke en Financieel verhoudingen Nederlandse Antillen, 8 October 2004.

261 In a report entitled 'De visie van de Arubaanse regering op de toekomst van het Koninkrijk'. Several Dutch documents mention it. See e.g. 'De toekomst van het Koninkrijk', p. 1; 'Raad van State van het Koninkrijk, Voorlichting inzake een te ontwikkelen visie op het Koninkrijk, 5 September 2011 W04.11.0154/I', para. 1.2; Parliamentary report II 2011/12, 33 240 IV, no. 1, p. 14; 'Samenwerkingsprotocol Aruba – Nederland', Oranjestad, Aruba, 27 October 2011, p. 1.

Netherlands in 2011²⁶² which put forward their views on the Kingdom's new style as agreed upon between the countries after the finalisation of the restructuring process, Curaçao has not formulated its approach on the matter.²⁶³

§ 6.11 Conclusion

In this chapter I presented an elaboration on the constitutional framework of Curaçao which forms an essential part of the national protection system directed at the realisation of (women's) human rights at local level. My point of departure was that the presence of a comprehensive constitutional framework is crucial for respect, protection and fulfilment of fundamental rights domestically. The Constitution of Curaçao is the primary domestic framework ensuring these rights. It is supplemented by numerous international human rights conventions to which the Kingdom is a party. For the understanding of the effectuation of human rights in Curaçao, one has to distinguish the two levels of accountability in the promotion, fulfilment and protection of human rights, namely the (internal) Kingdom's level and the national level, in conjunction with the mechanisms on the international level that Curaçao has to take into account. Furthermore, in this structure the role of the Kingdom has both internal and external components.

First, the external aspect concerns the responsibility of the Kingdom in foreign relations under Article 3 Charter, which provides that the Kingdom has the power to conclude conventions, and not the individual countries. The procedures related to the adoption of international agreements by the Kingdom are governed by norms enshrined in the Vienna Convention on the Law of Treaties, the Charter, the Constitution of the Netherlands and the Kingdom's Act on the Approval and Publication of Conventions. The Council of Ministers of the Kingdom is the primary State-organ responsible for the negotiation and signing of international agreements. When and if these agreements concern issues that touch the interests of Curaçao, the Minister plenipotentiary represents its national Government as a member of this Council. Article 27 paragraph 1 Charter ensures the participation of Curaçao in this area.

No convention can have binding force though, without its ratification by the States-General through a Kingdom's Act, even when it only concerns the Caribbean countries. The input of the Parliament of Curaçao in this process is guaranteed by the mechanisms under Article 24 Charter and also Article 13 Kingdom's Law on Approval and Publication of Treaties. Despite the fact that the Kingdom is the State-party that participates at an international level, Curaçao is allowed to act with relative autonomy in the international arena with the support of the Kingdom as long as its actions do not conflict with its position within the Kingdom. The regime under Articles 25 and 26 guarantees a degree of autonomy for Curaçao in decisions on the binding force or termination of conventions with a financial or economic nature. Effectively, this regime is used for all conventions applicable in the Caribbean countries.

262 See *'De toekomst van het Koninkrijk'*, available on: www.rijksoverheid.nl/documenten-en-publicaties/notas/2011/07/15/notitie-de-toekomst-van-het-koninkrijk; Letter Minister of Interior Affairs and Kingdom's relations (R.H.A. Plasterk) to the President of the House of Representatives, ref. 2011-2000578279, topic: *'Nadere invulling Toekomstvisie'*, 15 December 2011; *'Raad van State van het Koninkrijk, Voorlichting inzake een te ontwikkelen visie op het Koninkrijk'*, 5 September 2011 W04.11.0154/T; Borman 2011, pp. 27-30.

263 As of May 2014, I was not able to retrieve any documentation on a view of Curaçao on the Kingdom.

The view of the Kingdom regarding international human rights conventions is that, considering their essence and nature, they should apply in all the countries equally, with or without reservations. In addition, in many cases the territorial clause incorporated in these conventions ensures this. At the internal level, each country is responsible for the implementation of the State-obligations under international (human rights) law. Since the adoption of the new arrangements under Article 27 Charter more clarity has been provided on this subject and on the (forceful) cooperation between the countries for the proper effectuation of these obligations at the national level.

My examination of the relationship between international and domestic law for the establishment of the (direct) enforceability of international law in the national legal system showed that the modified monistic theory applied in the Netherlands is embraced by Curaçao, as its legal system stems from the Dutch system. The premise is that international (human rights) law, which binds the Kingdom under public international law, forms a part of and is binding in its domestic legal system. This approach is established through doctrine and case-law. It is partly codified in Articles 93 and 94 Constitution of the Netherlands, when it concerns provisions that are binding on all persons. These Dutch constitutional provisions are applicable in the Caribbean countries pursuant to Article 3 paragraph 1 sub b and Article 5 paragraph 1 Charter. This construct ensures judicial review of domestic law upon provisions of international law that bind all persons, which strengthens the protection system domestically. Otherwise, it is up to the legislature to determine the compatibility of domestic law with international law. Although neither Article 3 nor Article 5 Charter mention the effectuation of (human rights) conventions and international agreements at the domestic level as Kingdom's affairs, the 'entanglement' of the Constitution of the Netherlands with the Charter in this area is evident.

However, when I consider the constitutional review prohibition set out in Article 120 Constitution of the Netherlands as applied in the Netherlands, and the one maintained in the former Netherlands Antilles based on tradition and, in my view, on an incorrect interpretation of the law by the judiciary, I have to conclude that the Antillean constitutional review mechanism showed fundamental limitations in this area. Therefore, I support the scrutiny of domestic law on international law as it has reinforced the national protection system. Some clarity on the foundation of the prohibition of constitutional review in the Netherlands Antilles came with the *Harmonisatiewet* case of 1989. However, as of today, the Kingdom's legislature has failed to regulate the matter at Kingdom's level properly following the possibility provided by Article 49 Charter. So, full subsequent constitutional review at national level and constitutional review by the judiciary at Kingdom's level has still not been established.

At the national level, the Curaçaoan Government is responsible for the realisation and protection of human rights contained in the Constitution and those enshrined in adopted conventions. However, at the Kingdom's level, the Government of the Kingdom has an obligation, pursuant to Article 43 paragraph 2 Charter, to safeguard the fulfilment of these rights in the realm. In cases of structural and severe violation and negligence of these rights by local agencies the Kingdom can take action to correct such wrongful situations. Much caution is needed though in the possible effectuation of this administrative supervision mechanism as it a severe instrument that touches on the right of self-determination of the country. Furthermore, according to the literature, it is not a self-executing provision and it

provides for very limited accountability of the Kingdom, as there is no Kingdom's agency, such as a Kingdom's Parliament or Constitutional Court, with the power to scrutinise its application by the Kingdom's Executive or its effectiveness. Effectively, it becomes operational through, *inter alia*, the mechanisms enshrined in Articles 50 and 51 Charter. With these Articles, the Kingdom (i.e. the Netherlands) has the power to intervene, on an incidental or structural basis, in the internal affairs of Curaçao. Moreover, the mechanisms instituted in Article 27 paragraph 3 Charter and those in the consensus-Kingdom's Acts on Financial supervision and Police forces contain rules like that under Article 43 paragraph 2 Charter. The obligation to take effective actions for ensuring the effectuation of future international obligations, pursuant to Article 27 paragraph 2, further delineated in the Mutual Agreement on the cooperation in the Implementation of Treaties of 2010, reveals an extensive support and coordination system at the Kingdom's level. In cases of non-compliance by Curaçao, the Kingdom now has the power to impose supervisory measures. All these measures touch on the autonomy of Curaçao.

Currently, a (mandatory) cooperation and assistance approach prevails in the Kingdom, as an expression of the way to effectuate Article 43 paragraph 2 Charter. Other examples of the cooperation approach are present in the enacted consensus-Kingdom's Acts, pursuant to Article 38 paragraph 2 Charter, where internal affairs are regulated at the Kingdom's level, and through which more involvement and a greater voice of the Kingdom in internal affairs is (in)directly created, thus restricting the autonomy of Curaçao. The supervision mechanisms incorporated in some of these Acts imply limitations in the legislative and executive autonomy of the country. With the suggested approach on cooperation and assistance as a progressive and dynamic interpretation of Article 43 paragraph 2 Charter, a better protection and fulfilment of human rights can be constructed at the local level, as long as this takes place from a contextual approach.

In my view, better protection for local people, considering the characteristics of Curaçaoan post-colonial society where inequality, abuse, oppression, lack of governmental capacity and lack of accountability of State-agencies towards the population are common, remains a requirement. There is also a need and urgency to strengthen the protection and implementation mechanisms at the Kingdom's level, which in the view of the Council of State of the Kingdom could be addressed through the setting up of cooperation mechanisms on the areas of socio-economic development, education of the population, public health, and human rights, following the example of the consensus-Kingdom's Acts of 2010, under Article 38 paragraph 2 Charter or under Article 43 paragraph 2 Charter. With the application of this cooperation and assistance approach among the countries in regard to the realisation and protection of children's rights during the Kingdom's conference of 2014, this position found support.

Unfortunately, the Kingdom's legislature, together with the then local (Curaçaoan) legislature, did not take the restructuring of the Kingdom as an opportunity to attend properly to some important issues for the local people and for the improvement of the governmental structure, which could have further strengthened and cleared up the accountability aspect for the realisation of human rights on the domestic level. The inclusion of mechanisms in the Charter directed towards the strengthening of Kingdom's State-organs and their functioning could have provided some relief. Whether we want to admit it or not, the functioning of these organs does affect the level of compliance with State-obligations under international

human rights law. This expresses itself in the level of commitment of the Kingdom towards its safeguarding role in the protection of human rights at the national level. So, the democratic deficit within the Kingdom's structure has to be attended to. The fact of the matter is that the convergence of Dutch State-organs with those at Kingdom's level does complicate things. Also, the exclusion of the adoption of a Kingdom's law stemming from the obligation set out in Article 49 Charter on the institution of review powers for the Court raises another issue. With the adaptation of the Charter in 2010, the possibility to set up independent dispute resolution institutions, under Articles 12a and 38a Charter, to adjudicate on disputes between the countries and on the interpretation of the Charter, is to be applauded. This was necessary considering the ineffectiveness of the dispute mechanism under Article 12 Charter that led to much frustration and dissatisfaction between the countries; all which endangers the functioning of the governmental agencies involved and the cooperation and assistance between the countries, particularly that required for the fulfilment of human rights at country level. Differences in view among the countries as to how to execute the obligations under the new provisions form major challenges. In my consideration the accountability aspect and the monitoring mechanisms should be better safeguarded at the Kingdom's level as well.

The fiction of the equality between the partners within the Kingdom has to be abandoned. The reality is that Curaçao should have, within the (modified) Charter structure, a constitutional framework, in accordance with its own realities, the needs and the level of development of its people, and the standards, values and principles under international human rights law. To date its legal system mainly follows the Dutch legal system. This is shown in the high level of concordance in legislation. However, despite such concordance, following Article 39 Charter and as enshrined in the new ruling on Mutual Agreement on the Official Legislative Consultation on the Kingdom's Relations, a reduced level of concordance in legislation and uniformity in law is expected or has even been registered already, which may be reflected in case-law. Thus, the plea uttered for a restrictive approach on concordance benefiting the unity in law, starting from a contextual approach, particularly by the Supreme Court of Justice when addressing local cases, is understandable.

Another reality at country level is that the introduction of the partial subsequent constitutional review under Article 101 Constitution of Curaçao cannot be seen as an additional protection mechanism as this type of protection already existed in the review of Acts of Parliament on those provisions of international human rights conventions which are binding on all persons. Curaçao has missed an opportunity to bring the required modernisation into its constitutional regulation, which could have included a better protection system for local people. With the incorporation of at least a prior constitutional review and a national Constitutional Court, following Sint Maarten, a more effective and progressive protection of (women's) human rights could have been realised, particularly if it were to be based on the enforcement of provisions by which wrongful Acts of Parliament and other (legal) measures could be nullified and/or revoked. I am of the view that a prior constitutional review induced by a State-agency, supplemented by a general subsequent constitutional review, where not only State-agencies, but also individuals, can submit claims, would have served Curaçao better.

All in all, I find myself agreeing with the reasoning that the Government of the Kingdom is the ultimate supervisor and accountable State-agency which has to ensure the

effectuation of (women's) human rights at the domestic level. Considering that, besides the already existing supervision mechanisms under, inter alia, Articles 43 paragraph 2, 50 and 51 Charter, there have been since 2010 additional supervision instruments created in Article 27 paragraph 3 Charter in regard to the implementation of international obligations at national level, and in consensus-Kingdom's Acts, particularly in the Kingdom's Acts on financial supervision and on Police forces, these all combine to strengthen this position. Moreover, the suggestion that the human rights enshrined in conventions and the Constitution of the Netherlands are 'Kingdom's human rights' through Article 5 paragraph 1 Charter and Articles 93 and 94 Constitution of the Netherlands underscores this. The Government of the Kingdom is the last resort in cases of negligence and structural violation of (women's) human rights by local governmental actors and third parties. So, in my view, it has to assume a stronger position regarding its supervision role in the fulfilment of the human rights of local populations in the Caribbean islands.

Chapter 7

GENDER-SENSITIVE EQUALITY AND NON-DISCRIMINATION NORMS

§ 7.1 Introduction

Equality, together with non-discrimination, is one of the main norms for the realisation of human rights and the effectuation of a human rights-based approach on development benefiting vulnerable groups in society. It implies that all human beings have equal rights and should be treated equally by the law and before the law. Equality does not always mean that all people should be treated the same way in all circumstances though. Differentiation of treatment is possible and sometimes even required. Difference in treatment results in discrimination when it is unjustifiable and when it negatively affects the dignity and development of an individual. The equality and non-discrimination norms which are valid domestically are ensured in the Constitution of Curaçao¹ and general human rights conventions.² These gender-neutral norms demand equal treatment for both men and women on an equal footing.

The Women's Convention as a specific convention gives directions concerning the creation of legal norms of equality and non-discrimination from a women's perspective. The Convention thus makes the move from gender-neutral and 'colour blind' norms that require equal treatment of both men and women, to the recognition of the particular nature of women and the subordination they suffer. The Convention addresses the systemic nature of discrimination and oppression experienced by women in public and private spheres. Important questions are therefore:

What do the concepts of equality and non-discrimination entail and why are they of such importance for the protection of vulnerable groups within a society?

In which way have the equality and non-discrimination norms in (inter)national laws contributed to the accomplishment of effective equality in Curaçao?

What are their contributions for the protection of the inhabitants in general and local women in particular?

1 Article 3 Constitution Curaçao.

2 See e.g. Art. 26 ICCPR and Art. 14 ECHR.

Contemplating all these questions and many others, I consider an examination of the (inter) national legal concepts and norms of equality and non-discrimination, (temporary) special measures, their grounding and their mutual relationship to be imperative. Moreover, in the designed 'PANEL' analysis, non-discrimination, i.e. equality, is the leading and most critical aspect for transformative changes in society. The meaning of these norms and standards from a human rights approach, a gender approach and a women's approach is also of great interest to me.

Therefore, § 7.2 contains a short elaboration on the concepts of equality from a historical and legal perspective. I look at the meaning of the non-discrimination principle in § 7.3. The introduction of (temporary) special measures is contemplated in § 7.4. This is followed by an elaboration on the concepts of intersectionality and multiple-discrimination in § 7.5. Some relevant national and international norms of equality and non-discrimination valid in Curaçao are set out in § 7.6 and § 7.7. In its turn § 7.8 contains a short theoretical analysis on the principle of equality and non-discrimination from a women's and a gender perspective. The provisions which form the framework of the rights and obligations enshrined in the Women's Convention are also covered in this paragraph. I conclude the chapter with a short analysis of the various findings in § 7.9.

§ 7.2 Historical and legal background of the equality concept

The concept of equality with its theoretical and legal significance is one of the most difficult concepts to describe and analyse. The theoretical approach set out from the presumption of every person being born equal and being equal in their right to dignity. The legal concept refers to the premise that every human being has the right to be treated equally by and before the law in equal circumstances. It also suggests the recognition of differences between individuals and their positions in society and that, based on this, people should be treated differently. The theoretical approach has an influence on the interpretation and understanding of the legal concept of equality and vice versa.³ Considering the complexity of this concept, several clarifying remarks are made below from a historical and legal perspective.

§ 7.2.1 *The historical context*

As the history of mankind is characterised by upheavals and struggles for the attainment of equality by social groups, the concept of equality can by no means be described as a new phenomenon. Furthermore, equality in itself is a very dynamic and revolutionary concept. It has had many meanings and implications since the time of the Greek philosophers and the Roman era. The ancient significance of the principle does not entirely correlate with our contemporary understanding as the social, political and legal constructs of the different eras differ in their essence from each other.⁴ However, the philosophy of Aristotle on the equality principle still prevails as it suggests that equal cases should be treated alike and unequal cases should be treated in an unlike way.

The modern conceptualisation of equality is intertwined with the revolutions that took place during the eighteenth century, where (legal) equality was adopted in several

3 Loenen 2009, pp. 11-12.

4 Boersema 2007, pp. 21-26.

Western (constitutional) documents. The concept of equality at that time did not imply social equality. Nonetheless, it contributed to the emancipation of several (former) socially weaker groups and it provided some accessibility to the common good of the socially and economically dominant groups in the nineteenth century. It gained further importance and legal composition during the twentieth century, through the Charter of the United Nations of 1945,⁵ and the adoption of the Universal Declaration of Human Rights.⁶ This means that the contemporary concept of equality is undeniably connected with the development and rise of human rights law.⁷

The (legal) equality concept has played an important role in the development of modern (western) societies that are distinguished as being founded on the fundamental elements of democracy, pluralism, (social) justice, tolerance and solidarity. Equality, as one of the three principles⁸ on which democratic legal orders are built, turned into a valuable (legal) instrument that provides protection to individuals in both the private and the public domains. In this context Holtmaat remarks that, by putting too much emphasis on the equality principle though, tensions have risen between the mentioned principle and the effectuation of the other two principles, particularly in multicultural societies.

Equality remains nonetheless an effective (legal) instrument for the development of a more egalitarian society. The concept itself is characterised as a dichotomy between the creation of an egalitarian society and the maintenance of the power by the elite. This dichotomy is evident first in its importance for the development and maintenance of a democratic society and secondly in the protection it provides to humans and human dignity in past and future years.⁹

§ 7.2.2 *The legal context*

For an appreciation of the content of the legal concept of equality an analysis of the legal system in which it is incorporated is imperative. As a legal concept it enhances any instrument which binds primarily public authorities. It means the right of every individual to be treated equally, regardless of his/her creed, ethnicity, sexual orientation, political and/or religious background. The legal system of a State gives the frame of reference wherein the equality principle can develop.¹⁰

Despite the variations in interpretation it encounters in specific States, some elements of the concept remain common and uniform, and thus universal. As Holtmaat noted, there exists a universal consensus on the fundamental value of the equality concept. The problem lies in the (im)possibilities of providing legality to the concept. It is like a coin with two sides: one side enhancing the right of individuals to be treated equally by the law and before the law and the other side proclaiming the prohibition of discrimination. This reveals a division

5 See Preamble, Art. 1 para. 3, Art. 13 para. 1 (b) and Art. 55 para. c UN Charter.

6 Several aspects of equality and non-discrimination are addressed in the Preamble and Arts. 1, 2, and 7 UDHR. Art. 1 UDHR, a general norm, and Art. 2 UDHR enhance an absolute formulation of the equality principle and the non-discrimination norm. Article 7 UDHR prescribes equality by the law and before the law.

7 Boersema 2007, pp. 27-32; see also § 3.2.

8 The other two principles are freedom and solidarity.

9 Holtmaat 2004 (c), pp. 3-13; Alkema 2004, pp. 53-54.

10 Loenen 2009, pp. 19-20.

between positive equality and negative equality. In this sense one has to bear in mind that equal treatment in itself is simply a procedural concept, yet one with an intrinsic value.

Moreover, the concept does not provide information about the rights which individuals have. It is by the creation of equality legislation by a State-government that the evil of inequality of treatment is dealt with.¹¹ At first glance Alkema seemed to contradict the division of the concept as posed by Holtmaat, as he stated that there exists a significant difference between the two sides of equality. The first side is directed towards the State-government and the second one towards the citizens.¹² A closer look shows that both authors accept that equality provisions often provide two separate legal norms.

§ 7.2.3 *Formal, substantive and transformative equality*

There are two main approaches to the equality principle: the formal approach and the substantive approach. Formal equality upholds the right of individuals to be treated in the same manner by public authorities in equal circumstances. It is grounded on the premise of individual justice, meaning the creation of equal chances for every individual. Substantive equality finds its expression in the creation of equality based on the specific circumstances of individual cases. Legislation permitting differentiation between social groups and among citizens is allowed for the creation of the ultimate result of equality. The outcome forms the ultimate goal through the positive actions taken by the Executive.

According to Wentholt, formal equality entails ‘some serious shortcomings in achieving “genuine equality” between the subjects of the law’. It merely allows the introduction of positive actions to some extent for the levelling of discrimination; it does not require it. According to this approach these actions are justified forms of discrimination, and this is inextricably linked with the dominant legal thinking within (Western) societies.¹³ As such the accomplishment of an absolute, formal equality is impossible. With the enactment of legislation distinction, classification and differentiation are automatically created.

Like absolute formal equality, the realisation of absolute substantive equality is not possible either, because it would imply taking into consideration the specific circumstances of every single human being within a society. In short, the two approaches portray a paradox within the equality concept.¹⁴ Nevertheless, for the realisation of real equality both approaches should function in correlation with each other, which means that they are not mutually exclusive. Understandably, the reconciliation of the two sides of the same coin is suggested.¹⁵

Actually, a shift from a more formal approach towards a more substantive approach has taken place, particularly in regard to women’s rights. Much emphasis is currently put on the creation of equality of opportunity for the removal of past discrimination. Thus, next to these two main approaches, the concepts of transformative equality and equality of opportunity are applied.¹⁶ Transformative equality perceives that real equality could

11 Holtmaat 2004 (b), pp. 2-8.

12 Alkema 2004, pp. 61-62.

13 Wentholt 1999, pp. 56-58.

14 Loenen 2009, pp. 13-16; see also Henrards 2008, pp. 235-237.

15 Heringa 2003, pp. 143-144.

16 Fredman poses a new division in the definition of equality rights. She enumerated formal equality, the opportunity approach which starts from equality at the outset, and the equality of results. Next to these three approaches she also mentions equality as transformation. Fredman 2003, pp. 112-115.

only be accomplished through the transformation of social structures of hierarchy and dominance which perpetuates oppression in the first place. This requires first and foremost the introduction of positive actions by the Executive. The equality of opportunity approach enhances both the presence of formal legal instruments encouraging the participation of disadvantaged social groups within society and the introduction of specific actions to secure their opportunities.¹⁷

§ 7.2.4 *Challenges related to the legal norm of equality*

Nowadays the presumption prevails that all human beings are equal, despite the differences in race, gender, religion, political opinion and abilities. Differentiation and diversity are only permitted when the distinction is grounded on a persuasive or objective justification. This does not, however, imply that the problem of differentiation is completely solved. Differences based on elements such as race and gender, and also the unequal effects of a strictly formal equal treatment can be enumerated in this sense.¹⁸

In her appreciation on the meaning of the equality principle, Goldschmidt stated that one has to be careful to provide an absolute right or claim to equality. This can result in two major problems for a society, particularly when too much emphasis is put on the right of every citizen to equal results, without considering the margin of appreciation that States have in the making of decisions and policies. There are limitations on the claim to equality, which lie firstly in the responsibilities which individuals have for themselves as individuals and which the Executive bears towards others and, secondly, in the premise of reciprocity. These two limitations are essential as a consequence of the importance of equality, which is inextricably linked with the recognition of differences and diversity within a society. Differences and diversity imply the margin of appreciation which the State-government ought to have in its policy-making, yet it does not permit or justify under any circumstances gross violations of fundamental rights. Thus, there exists a margin, but a margin with boundaries, which can be applied to discourage practices of unequal treatment. In this, societal organisations, in cooperation with the Executive, have an essential role in the creation of norms which can provide a common ground for a more equal society.¹⁹

Equality does not mean an independent right or claim in itself. Real equality can only be accomplished through other rights and interests of the individual or group within society. This aspect relates to the relationship between the right to equal treatment and other fundamental rights and freedoms, where the former can under no circumstances be considered as higher in any hierarchy than the latter. A claim based on unequal treatment or discrimination can easily be referred to a claim on a violation of a substantive right. Equality has to be connected to another substantive right for it to gain any value. Thus, arguably, a collision between the equality principle and any other fundamental right and freedom is simply non-existent.²⁰

17 Fredman 2003, p. 115; Byrnes 2012 (a), pp. 53-56; Biholar 2013, pp. 11-12, 23-26, 39.

18 Loenen 2009, pp. 20-23.

19 Goldschmidt 2004, pp. 782-791; see also Thomassen 2004, pp. 129-130.

20 Gerards 2004, pp. 97-108.

§ 7.3 Discrimination and its meaning

Discrimination and unequal treatment are linked and internalised with the way people treat and perceive each other and the roles they have obtained during the socialisation process. Discrimination can at best be described as a collective phenomenon, where groups of individuals are treated differently just because they are different. And these differences are deeply connected to their personal and permanent characteristics and their human dignity. Discrimination is more than just unequal treatment. It requires a pejorative element, a specific characteristic which members of the differentiated social group cannot deny, take away or renounce without harming themselves.

The concept of discrimination does not have a permanent content through which one can state with accuracy which aspects of the personal characteristics of a human being are involved and on which characteristics the unequal treatments are based. The criteria enshrined in anti-discrimination law are developed and delineated by developments within a certain timeframe and society²¹ and social necessity.²² In sum, the concept of discrimination does not have an accurate definition in national or international law. It is mainly narrowed down to the formal interpretation of the concept.²³ With the three indicators for the identification of direct discrimination formulated by Holtmaat, which are firstly, the presence of a dominant group in society which subordinates, excludes and affects adversely the socially weaker (minority) groups; secondly, that this type of treatment manifests itself in various areas of society and it enhances violations of the fundamental rights of other social (minority) groups; and thirdly, the manifestation of prejudice and stereotyping based on personal characteristics that cannot be disclaimed by the social (minority) group and which define their identity, the identification of discrimination, in which the State-Government is obliged to intervene through the adoption and application of proper non-discrimination legislation, can be accomplished.²⁴ In this sense the violation of fundamental rights or freedoms is the key element.

The main objective of the State ought to be the elimination of discrimination through the introduction, implementation and monitoring of national and international legal instruments and other measures. For the protection and fulfilment of vulnerable groups and individuals in society this is of the essence.

Non-discrimination clauses contained within domestic and international legal instruments distinguish between a non-exhaustive and an exhaustive system of grounds of differentiation. Contrary to the exhaustive system, in the non-exhaustive system of discrimination every new ground can easily qualify as a discrimination ground and consequently fall under the regime of the provision.²⁵ Hence, not every differentiation automatically results in unjustified unequal treatment or discrimination. Thus, the legislature

21 In the Netherlands, for instance, the Act on equal treatment based on disability and chronic illnesses came into force in 2003 (Stb. 2003, no. 206) and it was revised in 2009 (Stb. 2009, no. 101). The distinction grounds incorporated in the General Equal Treatment Act of the Netherlands were also expanded in 2008 with the inclusion of sexual orientation (Stb. 2009, no. 8).

22 Van de Pot/Elzinga, de Lange & Hoogers 2014, pp. 299-303.

23 Wenholt 1999, p. 54.

24 Holtmaat 2004 (b), p. 9; Holtmaat 2004 (d), pp. 78-93.

25 Alkema 2004, pp. 53-55.

has to be as clear as possible about the scope and meaning of enforced anti-discrimination legislation.

§ 7.3.1 *Discrimination in effect*

Indirect discrimination or discrimination in effect presents itself when a distinction based on neutral criteria, which at first glance does not suggest any form of discrimination, results in a forbidden distinction based on one of the non-discrimination grounds or has a disparate impact on a group of persons.²⁶ The development of this concept has significantly broadened the scope of protection provided by the prohibition of discrimination to vulnerable groups within societies. It provides more adequate tools to address the hidden forms of discrimination and unequal treatment. It helps to signal and address the more structural social-economic problems with which disadvantaged social groups are confronted.²⁷ The premise is, though, that any distinction which can be justified and has a legitimate purpose and is proportionate is allowed. With the possible existence of a reasonable and objective justification one cannot speak of discrimination, whether direct or indirect.

For the justification of indirect discrimination some guidelines have been developed by the Court of Justice of the European Union. The establishment of the objectives which the legislation or measures have to meet to be considered acceptable, is important.²⁸ In the European context, the concept of indirect discrimination has found its development and interpretation through the case-law of the Court of Justice of the European Union,²⁹ such as the *Bilka Kaufhaus* case³⁰ on indirect discrimination based on sex. The scrutiny developed by the Court of Justice of the European Union has also found its reflection in the decisions of the national courts of the Netherlands and (indirectly of) the former Netherlands Antilles, i.e. Curaçao. The development of the concept has contributed to the enrichment of a more substantive approach of the equality principle.

In addition, the refusal to comply with the obligation of reasonable accommodation qualifies as a form of discrimination based on disability; an approach which has been formulated internationally³¹ and introduced in the International Convention on the fundamental rights of persons with disabilities.³²

§ 7.4 **Special measures, i.e. preferential treatment, in general**

Another method to eliminate or redress discrimination is the introduction of special measures, also known as preferential treatment or affirmative action.³³ These measures

26 Henrards 2008, p. 256.

27 De Fey e.a. (red.) 2004, p. 28; Loenen 2009, pp. 69-70.

28 Asscher-Vonk 1999, pp. 44-45.

29 For the case-law, visit www.curia.europa.eu.

30 Judgment of 13 May 1986, case 170/84 (*Bilka Kaufhaus GmbH v Weber von Hartz*).

31 In the Netherlands this concept is laid down in Art. 2 Act on equal treatment based on disability and chronic illnesses.

32 This Convention entered into force in March 2008, but it has not yet been ratified by the Kingdom. In its Art. 2 the term 'reasonable accommodation' is defined. Available on www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx, last visited 15 April 2015

33 Different terms, such as preferential treatment, affirmative action, and (temporary) special measures are used. The terms are often used interchangeably. Contrary to many other countries, the UK used the term 'positive

can be described as the application of a specific criterion, such as race or gender, in (legal) measures to eliminate the discrimination against or exclusion of specific social groups perpetuated by unequal treatment despite the existence of legal equality within a society. The main purpose of this is the stimulation of the further development of these specific, underprivileged social groups. One major characteristic of special measures is that the (legal) measures which enhance the treatment are temporary, which means that when the aims of the (legal) measures are accomplished, they ought to be eliminated.³⁴ These measures should not be confused with positive actions.³⁵

The formal approach of equality supports the application of preferential treatment as merely an exception to the rule of equality. In the context of the substantive approach, preferential treatment is a necessity for the achievement of real equality. It forms a component of equality, because differentiations in unequal cases are mostly necessary for the realisation of genuine equality. In these cases one has to take into consideration the proportionality requirement, although it has to be weighted differently.³⁶

The concept of preferential treatment³⁷ developed in the US obtained its interpretation from the view of the US Supreme Court.³⁸ This tradition stems from the justification based on compensation for past discrimination. It got a very singular meaning in Europe. Following the interpretation provided by the Court of Justice of the European Union, the concept finds its justification in the eradication of present discrimination derived from past inequalities despite the existence of legal norms on equality.³⁹ It became an approach directed to the improvement of the situation of women. Its further development in Europe was firstly confined to the national policies developed by the Member States.⁴⁰ The European approach has changed since 1995 following the *Kalanke* case⁴¹ and the *Marschall* case.⁴² Considering the main focus of this investigation, I will refrain from in-depth remarks on the content and the merits of these cases which are based on European equality law as this is not directly applicable in the Curaçaoan legal system.

The recognition that the obligation for the enactment of special measures by the State is created basically through case-law and interpretation is important. In general equality and non-discrimination norms do not provide clarity on the possibility of (temporary) special

action' for the term 'affirmative action'. See Bossuyt 2003, p. 65-74; In the course of this study I will apply the term (temporary) special measures, in accordance with the Women's Convention.

34 For a good example of this, see Art. 1 para. 4 ICERD.

35 Positive actions entail a broader concept which implicates all types of measures, not based on a specific criterion, that have the general objective, taken by the State, of bettering the position of certain groups of people in society. It is an ambiguous term that does not only entail preferential treatment. In international human rights law it implies the obligation of a State to introduce actions instead of abstaining from any action. Loenen 2009, p. 96; Schöpp-Schilling 2003, p. 22.

36 Wentholt 1999, pp. 59-60.

37 According to the literature, the term 'affirmative action' was applied in the United States. It has found its way into UN documents.

38 For a short assessment hereof, see Bacchi 2003, pp. 77-79.

39 Veldman 1999, p. 287; Loenen 2009, pp. 98-100.

40 Veldman 1999, pp. 279-291.

41 In this case the then European Court of Justice ruled out forms of special measures, i.e. preferential treatment, of women above men in regards to access to employment, vocational training and promotion in cases where the candidates are equally qualified. Judgment of 17 October 1995, case C-450/93 (*Kalanke v Bremen*); see also Van Schelven 1996, pp. 267-273.

42 Due to this case, preferential treatment of women in regard to promotion when a job position opened up, became possible. Judgment of 11 November 1997, case C-409/95, (*Marschall v Land Nordrhein-Westfalen*).

measures, i.e. preferential treatment, in their formulation. The concept had already surfaced at the international level in 1965 in the International Convention on the Elimination of Racial Discrimination (ICERD), then in the Women's Convention of 1979⁴³ and afterwards in the general comments of treaty bodies.⁴⁴ The UN Human Rights Committee, for instance, underlined in its General Comment no. 18 the fact that sometimes Member States are obliged to take affirmative measures⁴⁵ to minimise or eradicate conditions which cause or maintain discrimination and unjustifiable unequal treatment within society.⁴⁶ This obligation is reaffirmed in its General Comment no. 28 in the context of securing the participation of women in the public sphere.⁴⁷ In addition, the UN Committee on Economic, Social and Cultural Rights (CESCR) has admitted, in its General comments, the possibility of the introduction of these measures for the acceleration of effective equality for disadvantaged social groups.⁴⁸ In its turn, the Committee of the Women's Convention provided an extensive explanation of the relevant provision (Article 4) in its General Recommendation no. 25 for the acceleration of the advancement of women at country level.⁴⁹

§ 7.5 Discrimination on multiple grounds

The reality is that the treatment which a person receives is measured by the white male Christian heterosexual norm. The more a person diverges from this norm, the more likely it is that this results in multiple discrimination against that person. Many women, for instance, are discriminated against based on more than one ground, such as their ethnicity, social class, language, age, sexual orientation, disability and marital status. The criteria developed by the (inter)national judicial and quasi-judicial organs in equal treatment cases are therefore of importance for the comprehension and illustration of the complexity of (non)compliance with the legal, single-ground equality in domestic legal systems, where the legal construct of multiple discrimination is not explicitly incorporated.

In many cases the use of the legal construct of multiple discrimination is not excluded, such as in the case of the Kingdom,⁵⁰ where State-agencies, particularly the courts, depart from the single ground of discrimination. State-agencies have a tendency to discard the possibility of multiple discrimination based on the fact that the legislation does not provide the instruments to address this phenomenon properly. Victims are (un)willingly forced to make a choice between discrimination grounds. The scrutiny which the courts perform tends to neglect the complexity of the discrimination experienced and perceived by vulnerable social groups, such as women.⁵¹ The judiciary starts from the comparator

43 See Art. 1 para. 4 ICERD and Art. 4 Women's Convention.

44 For an elaboration on the background and nature of this concept, see Schöpp-Schilling 2003, pp. 15-33.

45 The Committee did not apply the term (temporary) special measures, i.e. preferential treatment.

46 CCPR GC18 (1989), para. 10.

47 CCPR GC 28 (2000), para. 29.

48 CESCR GC 16 (2005), para. 15; CESCR GC 20 (2009), paras. 9, 38.

49 Considering the importance of CEDAW GR 25 (2004) for my thesis an extensive elaboration follows in § 7.8.3.1.

50 Until 2009 there had not been any cases of multiple discrimination registered in the Netherlands. See '*Multiple Discrimination in EU Law: Opportunities for Legal Responses to Intersectional Gender Discrimination?*', European network of legal experts in the field of gender equality, European Commission 2009, pp. 95-98.

51 Nielsen 2008, p. 31-48; for the European context see '*Tackling Multiple Discrimination: Practices, Policies and Laws*', European Commission, Luxembourg: Office for Official Publications of the European Communities

test and a differentiation on the level of scrutiny based on the grounds of discrimination. This is grounded on the distinction made between classifications. It is questionable whether this construct provides the required protection to women in multiple, i.e. intersectional, discrimination cases.

§ 7.5.1 *Conceptualisation of intersectional and/or multiple discrimination*

The phenomenon⁵² of the accumulation of distinct grounds of discrimination is known as multiple discrimination or intersectionality. Other concepts are utilised in the literature for the identification of this phenomenon, like compound⁵³ or additive⁵⁴ discrimination.⁵⁵ Multiple discrimination upholds the combination of discrimination where a person is subjected to discrimination on various grounds. It is the most neutral term that is commonly used. Intersectional discrimination presents itself in cases where an individual is at the intersection, i.e. crossroads, of various distinction grounds, and it turns out to be difficult to identify the experienced discrimination under an already established form of discrimination because the operation and interaction of the grounds are so intertwined that they have become inseparable and unique.⁵⁶

It is acknowledged by many sources⁵⁷ that intersectionality was introduced by black feminism in the 1980s⁵⁸ in the United States. Actually, the main legal scholars Crenshaw and Collins⁵⁹ are regarded as the persons who described the concept initially. Subsequently, its initial meaning addressed the issue of skin colour intersecting with gender and class in the marginalisation of African-American women. Vieten concludes in her sociological appraisal of the concept from its American origin to its placement in the European context, that the understanding of the (streams of the) concept can provide enough tools for the

2007, pp. 19-22; *Multiple Discrimination in EU Law: Opportunities for Legal Responses to Intersectional Gender Discrimination?*, European network of legal experts in the field of gender equality, European Commission 2009, pp. 6-10; Conaghan 2007, pp. 322-324.

52 There is a common understanding in the literature on the determination of the terminology describing this phenomenon, i.e. concept. This is even more the case at European conceptual level. In the course of this research I will only utilise the concepts of multiple discrimination and intersectionality in accordance with the description provided. Schiek 2009, pp. 12-14; Nielsen 2009, pp. 31-32.

53 Compound discrimination entails discrimination on two or more grounds and it presents itself at one and the same time. One ground adds to the discrimination on another ground, yet the nature of the discrimination grounds remains distinguishable.

54 Additive discrimination defines the interplay of distinct grounds of discrimination.

55 The concepts are often used interchangeably.

56 Nielsen 2009, pp. 31-32; *Tackling Multiple Discrimination: Practices, Policies and Laws*, European Commission, Luxembourg: Office for Official Publications of the European Communities 2007, pp. 15-19; *Multiple Discrimination in EU Law: Opportunities for Legal Responses to Intersectional Gender Discrimination?*, European network of legal experts in the field of gender equality, European Commission 2009, pp. 3-4.

57 See e.g. Conaghan 2007, pp. 319-320; *Tackling Multiple Discrimination: Practices, policies and laws*, European Commission, Luxembourg: Office for Official Publications of the European Communities 2007, p. 15; *Multiple Discrimination in EU Law: Opportunities for Legal Responses to Intersectional Gender Discrimination?*, European network of legal experts in the field of gender equality, European Commission 2009, p. 4; Solanke 2009, pp. 115, 118-121; Schiek 2009, p. 12; Vieten 2009, p. 97; Winker & Dengele 2011, pp. 51-53; Nash 2011, pp. 445-470.

58 According to Nash the relationship between black feminism and intersectionality goes back to 1968. Nash 2011, p. 450.

59 See e.g. Crenshaw 1989; Crenshaw 1991; Collins 2009.

tackling of the legal concept of equality and the complexity of subordination.⁶⁰ In this context emphasis is put on the distinction ground of social class, which ‘...frames the individual access to economic wealth, cultural goods influencing political and public participation. And this classicism is wrapped in intersected layers of different cultural, ethnic, religious and gendered economic performances.’⁶¹

The conceptualisation of multiple or intersectional discrimination in the European legal system has not really taken place yet. At present, intersectionality is not common nor is it applied by the Court of Justice of the European Union. As a matter of fact it is underdeveloped. On the other hand, cases of multiple discrimination, regardless of the problems related to them, are being dealt with by this Court. They are often decided on the single-ground approach though.⁶² The acknowledgment of this situation is of the essence for Curaçao as these developments are, although belated, (in)directly reflected in its legal system as it models the Dutch, i.e. European, system.

Thankfully, intersectionality has been identified and defined by several international treaty bodies. The UN Committee on the Elimination of Racial Discrimination (CERD) was the first body which did so in 2000.⁶³ General Comment no. 28 of the UN Human Rights Committee in its turn stated that ‘the discrimination against women is often intertwined with discrimination on other grounds...’⁶⁴ The UN Committee on Social, Economic and Cultural Rights (CESCR) has also recognised the existence of this complex form of discrimination in its General Comments no. 16 and no. 20.⁶⁵ Nowadays, the use of intersectionality is uncontested on international level and has been widened to address the inferior situation of other groups of (non-white) women and also other vulnerable groups within societies.⁶⁶

As a consequence of its complexity and its inability to provide effective tools for practical matters, however, intersectionality has been strongly criticised. Yet, it is generally recognised that the conceptualisation of multiplicity and intersectionality has greatly strengthened the struggle for gender equality.⁶⁷ Subsequently, the description provided by the Committee which supervises the Women’s Convention comes in handy,⁶⁸ particularly for plural societies like Curaçao, which should have a real urgency to address in their anti-discrimination laws the complexity of the discrimination which women suffer. In General Recommendation no. 28 the Committee stated that:

60 Vieten 2009, pp. 95-107.

61 Ibid., p. 103.

62 Nielsen 2008, pp. 31-49; ‘*Multiple Discrimination in EU Law: Opportunities for Legal Responses to Intersectional Gender Discrimination?*’, European network of legal experts in the field of gender equality, European Commission 2009.

63 CERD GR 25 (2000), para. 3

64 CCPR GC 28 (2000), para. 30.

65 CESCR GC 16 (2005), para. 5; CESCR GC 20 (2009), para. 17.

66 Consider, e.g., the contribution of Goodwin on the multi-dimensional discrimination experienced by Roma (women) in Central and Eastern Europe. Goodwin 2009, pp. 137-156.

67 ‘*Multiple Discrimination in EU Law: Opportunities for Legal Responses to Intersectional Gender Discrimination?*’, European network of legal experts in the field of gender equality, European Commission 2009, p. 5; Conaghan 2007, pp. 317-334; Nash 2011, pp. 445-470; Winker & Dengele 2011, pp. 51-66.

68 The Committee has recognised several groups of women who can become subjected to intersectional discrimination rather easily. To mention a few: elderly, disabled, rural and migrant women, female members of certain racial groups and ethnic minorities, prostitutes, women from lower social classes, women in (post) conflict situations. See e.g. CEDAW GR 25, paras. 12, 38; CEDAW GR 27, paras. 1, 9, 13, 31; CEDAW GR 28, para. 18; CEDAW GR 30, paras. 7, 57; Chinkin 2012 (b), pp. 464-465.

Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, religion ... Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognise such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them ...⁶⁹

The objective of the concept is to remove the burden of choice that lay on the victims connected to the single-ground approach and to move towards the realisation of a multiple-consciousness approach. However, prior to moving from a single-ground approach towards a multiple approach, some authors pose that one has to look beyond the concept of intersectional discrimination. They suggest that the concept is limited by the usage of the terminology of grounds, which is bound up with the logic of immutability, in spite of the fact that intersectionality challenges the single-ground approach. For the accomplishment of intersectionality and multiple-consciousness in discrimination law, this limitation has to be abandoned and the dimension of stigma and the issue of identity have to be considered.⁷⁰ This position is illustrated by the specific discrimination that black men endure in British society, as described by Solanke.⁷¹ According to this author only a stigma-based approach and an approach based on individual experiences can amplify (European)⁷² non-discrimination law and address the discrimination with which problematic societies are confronted.⁷³

All in all, the development related to the conceptualisation of multiple discrimination and intersectionality appears to have its added value, which lay firstly in the identification of cases of discrimination 'at the intersection' of two or more grounds, particularly by women, secondly in the recognition that the effect of exclusion and marginalisation is stronger in cases of discrimination on more than one ground, and thirdly in the stipulation of the sums of compensation for the suffering that was caused, which are supposedly to be higher.⁷⁴

§ 7.5.2 *Effects of social and economic factors on intersectional discrimination*

Intersectional discrimination in itself implies (socio-political) analyses of the extent to which socio-cultural factors, such as race, class, gender, and nationality intersect with each other. This exercise considers the influences of social constructs for the inclusion or exclusion of certain social groups. Intersectionality provides an understanding of multiple forms of discrimination experienced by individuals, placed in socio-economic realities, which influence their social position.⁷⁵

69 CEDAW GR 28 (2010), para. 18; see also CEDAW GR 28 (2010), paras. 26, 28.

70 Solanke 2009, pp. 115-131; see also Conaghan 2007, pp. 321-322.

71 Ibid., pp. 121-128.

72 For an explorative assessment of the incorporation of multiple discrimination in European discrimination law and in domestic non-discrimination legislation and policy in 10 Member States and 3 non-Member States, see '*Tackling Multiple Discrimination: Practices, policies and laws*', European Commission, Luxembourg: Office for Official Publications of the European Communities 2007.

73 Solanke 2009, pp. 130-131.

74 '*Multiple Discrimination in EU Law: Opportunities for Legal Responses to Intersectional Gender Discrimination?*', European network of legal experts in the field of gender equality, European Commission 2009, pp. 19-20.

75 See e.g. Collins 2009.

Cases of intersectional discrimination often remain unregistered. So, according to Schiek, the objective should be to make these cases visible, as those at the intersection are most vulnerable for exclusion and unequal treatment ‘...caused by an interplay of ground related aspects of discrimination, and prevailing economic, historic, social factors.’⁷⁶ One main point of concern, though, is that the combination of distinction grounds makes its reviewing by the court less transparent than in single-ground discrimination cases. This can make it much easier for the offender to get away with forbidden unequal treatment or discrimination as this still creates evidential and enforcement problems.⁷⁷

Considering this, I cannot convincingly argue solely in favour of the single-ground approach for the reduction of multiple and intersectional discrimination in Curaçao, as this approach disregards in its essence the impact that multiple-discrimination or intersectional discrimination has on the sociological, economical, political, legal and cultural situation of vulnerable groups in this particular society. There is too much criticism of the single-ground approach in the literature to sustain such an approach.⁷⁸ My point of departure is the development and the incorporation of legally binding anti-discrimination law on intersectionality, to strengthen gender equality in the domestic legal system where a human rights-based approach is taken into account, which includes an analysis of the socio-economic factors that created the unequal treatment in the first place. The barriers that impede the acknowledgment of and research on intersectionality by public institutions in the first place should not be underestimated though. They should be eliminated in one way or the other.

§ 7.6 Domestic legal norms of equality and non-discrimination

The general equality and non-discrimination principles valid in Curaçao find their foundations in national and international law. An analysis of the domestic equality norms would, however, not be complete or accurate if I do not take into consideration the historical background and the legal structures it models. So, the general equality norms set out in the Constitution of the former Netherlands Antilles and the Constitution of the Netherlands are included, when and if this is necessary. In regard to the international context, the provisions incorporated in, inter alia, the International Bill of Human Rights, the European Convention on Human Rights and its Protocol No. 12 are taken into account as they have made a significant contribution to the protection that is provided to the inhabitants thus far. Elaborations on the scope and meaning of a selection of the most important provisions follow below.

76 Schiek 2009, p. 15.

77 Nielsen 2009, pp. 42-48.

78 ‘*Tackling Multiple Discrimination: Practices, policies and laws*’, European Commission, Luxembourg: Office for Official Publications of the European Communities 2007, pp. 15-19; Conaghan 2007, p. 325.

§ 7.6.1 *Domestic equality treatment norms in historical perspective*

The equality norm⁷⁹ was first introduced for the territories which formed the former colony of Curaçao⁸⁰ in 1865 with the issuing of the ‘General Governmental Regulation of 1865’.⁸¹ The norm is preceded by the phrase which stated that ‘slavery was no longer permitted in the colony’.⁸² Its incorporation was the consequence of the abolition of slavery in the former Dutch colonies in 1863. The non-permissibility of slavery in Article 4 General Governmental Regulation 1865 was abolished in 1948 by the Parliament of the colony of Curaçao.⁸³ Equality in rights and position of inhabitants and foreigners was also expressed in Article 3⁸⁴ of the ‘*Algemeene Bepalingen der Wetgeving van Curaçao*’ of 1868.⁸⁵ It stated that as long as the contrary was not regulated by general legislation, equality among inhabitants and foreigners in civil law prevailed. With the introduction and enforcement of the Constitution of the Netherlands Antilles in 1955,⁸⁶ the old formulation, following the Dutch constitution of 1887, was maintained. Article 3 Constitutions of the Netherlands Antilles 1955 stated that:

All persons in the Netherlands Antilles have equal entitlement on protection of their body and goods.

It had the same scope and meaning as the old Dutch equality provision. It upheld an obligation for the branches of Government to respect and protect the rights of every citizen equally.⁸⁷ A very remarkable characteristic was that the Article did not contain an explicit norm excluding discrimination. No additional criteria were mentioned or incorporated in the provision during its 55 years in force. Furthermore, no real attempts were made to amend this outdated formulation. In his contribution on the matter Van Rijn argued, even in the 1990s, in favour of the modernisation of the equality provision in particular and the list of fundamental rights incorporated in the Constitution of the Netherlands Antilles in general. Apparently, the importance of this reform was acknowledged by many, but the State-Government and many others actors wanted to wait for the then expected constitutional reforms of the Netherlands Antilles.⁸⁸ It was only at the end of 2010 that the Constitution

79 This provision was almost identical to the provision formulated in the Constitution of the Kingdom of the Netherlands of 1848. A small modification to the provision in the Constitution of the Kingdom of the Netherlands was introduced in 1887. Article 4 para. 1 Constitution of the Kingdom of the Netherlands of 1887 stated: ‘*Allen die zich op het grondgebied van het Rijk bevinden, hebben gelijke aanspraak op bescherming van persoon en goederen.*’ The phrase ‘*hetzij ingezetenen of vreemdelingen*’ in the then Art. 4 para. 1 was abolished in 1887. Van Rijn 1999, p. 139.

80 For the historical background of the former colony of Curaçao, see Chapter 2.

81 Article 4 General Governmental Regulation 1865 stated: ‘*Slavernij in de kolonie wordt niet geduld. Allen, die zich op het grondgebied van Curacao bevinden, hebben gelijke aanspraken op bescherming van personen en goederen*’ (translation [by A.R.]: ‘Slavery was no longer permitted in the colony. All persons in these territories, residents or foreigners, have equal rights to protection of their body and goods’). P.B. 1865, no. 18.

82 This is a translation [by A.R.] from the Dutch formulation, which upheld the following: ‘*Slavernij in de kolonie wordt niet geduld.*’

83 Article 4 State-regulation Colony of Curaçao (P.B. 1948, no. 71); see also Van Helsdingen 1956, p. 44.

84 The provision stated: ‘*Zoolang de algemeene verordeningen niet bepaaldelyk het tegendeel vaststellen, is het burgerlyk regt in Curaçao hetzelfde voor hen, die geene ingezetenen zyn, als voor de ingezetenen van Curaçao*’.

85 This Act (P.B. 1868, no. 16) came into force in May 1869, following (Arts. 1 and 2) P.B. 1868, no. 18.

86 The Crown decree of 29 March 1955 as adapted (Stb. 1955, no. 136 or P.B. 1955, no. 32).

87 Van Rijn 1999, pp. 138-139.

88 The possibility of constitutional reform during the 1990s would probably have resulted in a revision of the Constitution of the Netherlands Antilles. However, the predicted dissolution of the Netherlands Antilles had

of the Netherlands Antilles was eliminated altogether without going through a process of modernisation.

§ 7.6.2 *Equality and non-discrimination norm of Curaçao*

Curaçao has its own Constitution, which models the Constitution of the Netherlands of 1983.⁸⁹ On the other hand, the Constitution of Curaçao contains considerable improvements⁹⁰ in regards to fundamental rights and freedoms.⁹¹ The equality and the non-discrimination norm is the first recorded fundamental right.

Article 3 Constitution of Curaçao 2010 reads as follows:

All persons in Curaçao shall be treated equally in equal circumstances. Discrimination based on religion, or beliefs, political persuasion, race, sex and on any other ground is not permitted.⁹²

The provision is identical to Article 1 Constitution of the Netherlands, as it mentions only five differentiation grounds. It does not model the provision⁹³ in the Constitution of Aruba of 1986, which incorporated an extensive number of grounds of discrimination.⁹⁴ It upholds the two sides of the concept of equality as a legal instrument. In the Explanatory Memorandum of the Constitution of Curaçao it is stated that this fundamental right is one of most significant rights for the State and for the rule of law. Furthermore, it contains a charge for the three branches of Government to take the objectives and justification of each case into account when adopting regulations and making decisions. The provision makes distinctions within society possible, through which differential groups are created in society. However, these distinctions have to be created on justified and reasonable grounds. The phrase ‘on any other ground’ expands its scope of protection. Besides the prohibition of discrimination in the vertical sphere, discrimination in the private sphere is also not permitted. The judiciary has a significant role supervising any violation.⁹⁵

not become a reality by then. It took almost 20 years for the actual reforms to take place. The Constitution of the Netherlands Antilles was abolished with the dismantling of the Netherlands Antilles on 10 October 2010. Van Rijn 1991, pp. 285-304; see also § 2.3.4 and § 2.3.5 for an extensive elaboration on the matter.

89 It is formally called the Constitution of the Kingdom of the Netherlands, but it is effectively the Constitution of the Netherlands and only applicable in the Netherlands and in the BES islands (Bonaire, Sint Eustatius and Saba islands) since 2010. It was last adapted on 22 August 2008 (Stb. 2008, no. 348). There are currently several interesting proposals for the adaptation of the Dutch Constitution, such as the incorporation of disability and hetero- and homo sexuality as grounds in its Art. 1. See Broeksteeg 2014, pp. 45-54.

90 For instance, the incorporation of one collective right (Art. 24). See also Arts. 22-27 Constitution of Curaçao.

91 The Constitution of Sint Maarten is in many aspects more progressive and dynamic in comparison with the one of Curaçao. See e.g. Van Rijn 2009; Hoogers 2010 (a); Hoogers 2010 (b); Hoogers 2011 (a).

92 This is a translation [by A.R.] of the original Dutch text, which stipulates the following: ‘*Allen die zich in Curaçao bevinden, worden in gelijke gevallen gelijk behandeld. Discriminatie wegens godsdienst, levensovertuiging, politieke gezindheid, ras, geslacht of op welke grond dan ook, is niet toegestaan.*’

93 Article I.1 Constitution of Aruba (A.B. 1985, no. 26; A.B. 1987, G.T. 1).

94 Bovendeert 2006, pp. 101-109.

95 Explanatory Memorandum Constitution Curaçao 2010, pp. 5-6.

§ 7.6.3 *A General Equal Treatment Act for Curaçao*

Although there existed the obligation enshrined in human rights treaties on the legislature of the former Netherlands Antilles to enact a general equal treatment Act, it did not comply with it. Curaçao has not enacted such a piece of legislation as yet, even though the constitutional reforms which the Caribbean countries went through represented a unique opportunity to do so.

The Antillean Executive did record in several official documents⁹⁶ that a national ordinance on equal treatment was drafted in 2006 that would enter into force within a reasonable time. As of 2014, this information has turned out to be incorrect as my search has established that the Act was not even drafted.⁹⁷ The reasoning behind the incorporation of such inaccurate information in periodic State-reports and national governmental policies is not clear to me. This situation symbolises a lack of commitment towards the creation of legal mechanisms to further the protection and equal treatment of disadvantaged groups, such as women, in the Curaçaoan system, particularly in the horizontal relationship; a legal measure which, in my opinion, is utterly necessary.

Neither the former Netherlands Antilles nor Curaçao followed the example set by the Netherlands which has several special Acts⁹⁸ on equal treatment and the General Equal Treatment Act of 1994⁹⁹ which ensures equality in horizontal relations.¹⁰⁰ The enactment of the Act was as a result of the obligations to which the State was bound under international and supranational Conventions¹⁰¹ to which it was party.¹⁰² Together with its fundamental rights ground, the Act has a low threshold and is accessible to the general public. The

96 It was recorded that the Ministry of Social Affairs, Labour and Welfare was in charge of the adaptation of the draft with the objective to publish it. See e.g. the Business Plan Ministry Social Affairs, Labour and Welfare of 2 November 2011 (revised version), p. 11; CEDAW/C/NLD/5/Add.2, para. 130; Conclusions of the European Committee of social rights of 2008, p. 42, available on; www.coe.int/t/dghl/monitoring/socialcharter/conclusions/ConclusionsYear_en.asp; A/HRC/8/31, para. 75.

97 After much research it became clear that such a draft ordinance did not exist. Yet, it was presented to the Committee as one of the measures which the former Netherlands Antilles intended to introduce to strengthen the protection of women. This information is confirmed by Members of Parliament and the Head of the legislation division of the Executive.

98 Prior to this Act the Netherlands had several Acts on equality and equal treatment, particularly in regards to equality among men and women in the labour sector. Further examples are: (1) the Act on equal payment for men and women (Stb. 1975, no. 129); (2) the Act on equal treatment of men and women (Stb. 1980, no. 86); and (3) the Act on equal treatment of men and women in public functions (Stb. 1980, no. 384).

99 The application area of the Act (Stb. 1994, no. 230) was broadened in 2008 with the addition of the distinction ground of sexual orientation (Stb. 2009, no. 8).

100 The Dutch Parliamentary report of 5 November 2001, 2001/2002, 28 100, no. 1, p. 2; Asscher-Vonk also mentioned in this context the obligations derived from Art. 5 ICERD. Asscher-Vonk 1999, pp. 39-51.

101 See e.g. former Art. 119 EC Treaty and former Directives 75/117/EEC and 76/207/EEC. Currently, the European Union equality framework includes, inter alia, Directive 2000/43/EC, Directive 2000/78/EC, Directive 2004/113/EC, and Directive 2006/54/EC.

102 Huls stated that the women's movement in the Netherlands was the force behind the introduction of this Act. Huls 2000, pp. 231-249; see also Terlouw & Hendriks 2008, pp. 620-629; Goldschmidt 2010, p. 257.

Netherlands Institute for Human Rights,¹⁰³ set up in 2012,¹⁰⁴ has the authority to initiate, both autonomously and on petition, investigations on possible violations of the equality norm as stipulated in the Act.¹⁰⁵ This institute has a department with quasi-judicial authority which performs this task.¹⁰⁶

The applicability of the law in horizontal relations does not entirely exclude its enforceability in vertical relations.¹⁰⁷ The premise for the application of this Act in unequal treatment cases relies on the comparative element which, according to Holtmaat, is not necessary. A direct prohibition of practices based on unacceptable differentiation related to personal characteristics should be sufficient for the protection that ought to be offered to vulnerable groups.¹⁰⁸

§ 7.6.4 *A specific norm: Article 1613 aa Civil Code*

At country level, a general provision prohibiting unjustified distinction between men and women in the labour sector came into force in 2012.¹⁰⁹ Article 1613 aa Civil Code regulates the prohibition of gender-based distinction in the hiring, dismissing and the promotion of employees. Divergence from this prohibition is permitted in cases where gender is a defining factor and when it is required for the protection of women in relation to pregnancy or motherhood.¹¹⁰ The provision provides a definition for distinctions based on gender, particularly connected to the status of a woman related to pregnancy, child-bearing and motherhood. It does not stipulate that unjustified and unreasonable distinction constitutes discrimination though. The instrument for the test and protection is created in Article 1613 aa paragraph 5 Civil Code, where it is prescribed that where a person has encountered disadvantage from a distinction, the facts of which have been presented, the burden of proof to contradict these facts lies with the other party.

103 The Netherlands set up this Institute following resolution GA A/RES/48/134 (the Paris Principles). The Dutch State-Government desired since 2005 to become a member of the UN Human Rights Council. The institute obtained a broad mandate and tasks in regard to the protection and promotion of human rights, including the scrutiny of Dutch equal treatment laws, as the Netherlands wants to obtain status-A for its full participation at the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights (ICC). See the Dutch Parliamentary report of 13 October 2010, 2010/2011, 32 467, no. 5; Explanatory Memorandum to the Act on the Netherlands Institute for Human Rights, pp. 1-7; see also the Strategic plan of the Institute (no date), available on www.mensenrechten.nl.

104 The Act on the Netherlands Institute for Human Rights (Stb. 2011, no. 573). This Act became enforceable on 1 October 2012 (Stb. 2012, no. 414). The scrutiny authority of the Institute is regulated by Decree (Stb. 2012, no. 394). The information on the enactment of these laws is to be found in Holtmaat 2013, p. 9.

105 Article 3 in conjunction with Art. 10 Act on the Netherlands Institute for Human Rights.

106 The scrutiny authority of the former Netherlands Equal Treatment Commission is transferred to the Netherlands Institute for Human Rights. The Institute supervises the General Act on equal treatment and the Act on equal treatment of men and women, pursuant Arts. 10-13. The scrutiny of equal treatment laws is not applicable in the three Dutch-Caribbean (BES) islands pursuant to Art. 2 Act on the Netherlands Institute for Human Rights. For details on the authority of the former Netherlands Equal Treatment Commission, see e.g. Huls 2000, pp. 231-242; Holtmaat 2000 (b), pp. 253-267; Goldschmidt & Hendriks 2004, pp. 19-38. For details on the performance of the Netherlands Institute for Human Rights as the successor of the Commission during its first year, see Jaarverslag College voor de rechten van de mens of 2012; see also Holtmaat 2013, pp. 9-18.

107 Loenen 2009, p. 64.

108 Gerards 2004, pp. 103-107.

109 The National Ordinance on the adaptation of the Civil Code (Book 7A) of 3 April 2012 (P.B. 2012, no. 24).

110 Article 1633aa paras. 2 and 3 Civil Code.

Article 1613 aa Civil Code utilises the neutral term of ‘distinction’ and not the stricter term of ‘discrimination’. It must be clear that direct distinction does not imply per definition a direct form of unjustified unequal treatment. Often the concepts of indirect discrimination and indirect distinction are applied as though they were the same. These concepts differ in effect from each other; in the sense that indirect discrimination is considered as being discrimination, which in all circumstances is prohibited, while indirect distinction does not necessarily signify discrimination. The results of a test on the justification ground have to determine whether, in the cases of indirect distinction, discrimination has manifested itself.¹¹¹

§ 7.7 Equality and non-discrimination norms in international human rights law

An elaboration on the domestic equality and non-discrimination norms alone does not provide proper insights on the protection that is available to the local population against discrimination and unequal treatment. The general equality and non-discrimination norms enshrined in international Conventions have to be included for a more accurate picture. There are many variations among the internationally recorded equality and non-discrimination norms, which lie for instance in the origin, the scope, and the strictness of the rule.

Firstly, concerning the scope of a rule, many sources¹¹² acknowledge two categories of equality and non-discrimination provisions. There are the accessory¹¹³ and the independent equality and non-discrimination norms. The first category provides protection to an individual against discrimination when one of the rights mentioned in the particular convention is at stake. They have a more restricted implementation scope. Through these provisions the State-members commit themselves to assuring the rights and freedoms proclaimed in a particular Convention and to abolishing any form of discrimination and unjustified and unreasonable distinction. In other words, these provisions create positive State-obligations for State-members.¹¹⁴ The second category is enforceable in any case where there is a presumption of unequal differentiation and/or discrimination. The scope of these types of equality and non-discrimination rules is broader. The importance of the distinction in categories is not only visible in regard to the implementation scope, but also in the additional obligations they create for the State-members.

The accessory equality provisions create onerous obligations, such as in taking preventive and effective measures, particularly in the areas of enforcement and sanctioning by the States. In regard to the independent equality provisions, the European Court of Human Rights has stipulated in its case-law¹¹⁵ that ultimately a State has to be continuously aware of the notion of ameliorating the rights of vulnerable groups within society. Thus, the introduction

111 Kellerman 2004, pp. 29-32.

112 See e.g. Asscher-Vonk 1999, pp. 39-51; Nieuwboer 2004, pp. 33-47; Nowak 2006, p. 61; Henrards 2008, pp. 235-280; Goldschmidt 2010, pp. 255-269.

113 Henrards qualifies these provisions as parasite-provisions, which give a very negative connotation to them. The name gives quite an adequate description of their function though. Henrards 2008, p. 238.

114 Nowak 2006, p. 61.

115 Van Dijk e.a. (eds.) 2006, pp. 1027-1051.

of limitations has to be evaluated on their necessity.¹¹⁶ For a better understanding of this matter, some brief remarks are made below on the meaning and application of a selection of international equality and non-discrimination norms which are directly applicable in the domestic legal system.

§ 7.7.1 *Non-discrimination in the International Convention on Civil and Political Rights (ICCPR)*

The International Convention on Civil and Political Rights (ICCPR) upholds three major equality and non-discrimination provisions. This Convention does not provide a description of the term discrimination though. This term is clarified by the UN Human Rights Committee in General Comment no. 18, which stipulates that:

the term ‘discrimination’ as used in the Covenant should imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.¹¹⁷

The Convention presents accessory norms under Articles 2 and 3 ICCPR and an independent norm in Article 26 ICCPR. Article 2 ICCPR states that every State-member is obliged to respect the rights formulated in the Convention and to protect the fundamental rights of every inhabitant, without any distinction. Its accessory characteristic stems from the phrase ‘the rights recognized in the Convention’. It exhibits a non-exhaustive system of grounds which results from the phrase ‘any other ground’. According to Henrards the ‘*travaux préparatoires*’ on the Convention suggest that not all form of distinction is forbidden, only distinctions that are unjustifiable and unreasonable, whereby the concept obtains the same elements as the concept of discrimination.¹¹⁸ Article 3 ICCPR explicitly excludes the distinction based on sex. In General Comment no. 28 the UN Human Rights Committee provided an extensive update on its scope.¹¹⁹ It considers many aspects of the rights of women, such as obligations of States to eliminate gender-stereotypes, gender-based violence¹²⁰ and to ensure the family rights of women in many aspects,¹²¹ the elimination of discrimination against women in the labour, educational and public sectors and by public and private actors.¹²²

Other general provisions upholding measures on equality and non-discrimination are Articles 4, 20 and 25 ICCPR. In addition, in those Articles containing the particular dimension of human rights, one encounters references to the principles of equality and non-discrimination.¹²³

116 Goldschmidt 2010, pp. 265-266.

117 CCPR GC 18 (1989), paras. 6-7.

118 Henrards 2008, pp. 240-241.

119 CCPR GC 28 (2000).

120 *Ibid.*, paras. 5, 8.

121 *Ibid.*, paras. 20, 23-29.

122 *Ibid.*, para. 31.

123 See e.g. Art. 14 para. 1 ICCPR and Art. 25 ICCPR.

Article 26 ICCPR presents an independent equality and non-discrimination provision. It has a non-exhaustive system of grounds and it applies the concept of discrimination explicitly. The provision¹²⁴ ensures the equal right to be protected by the law and before the law, and its effectuation is not bound to only the provision recorded in the Convention. It obligates the State-member, particularly the legislature, to secure equality and eliminate discrimination on any grounds among citizens through adequate legislation and measures. According to the UN Human Rights Committee, Article 26 ICCPR provides an autonomous right, by which discrimination is prohibited in law and in fact and public authorities are obligated to regulate and protect the rights of their citizens and non-citizens.¹²⁵ This provision offers better protection in comparison with, for instance, Article 2 ICCPR, as every case in which there exists a suspicion of discrimination can be reviewed in accordance with it. In other words, both citizens and non-citizens of States can make a claim on its application in any case of suspicion of discrimination. A good example of its added value in the Dutch legal system is provided by the so-called social security cases, where both the UN Human Rights Committee and the judiciary of the Netherlands considered that the then gender-based distinction in the pension and social security law of the Netherlands reinforced a form of discrimination. Dutch case-law has shown that the criteria in the provision are not always absolutely and therefore automatically applicable though.¹²⁶

§ 7.7.1.1 A selection of cases based on sex-based discrimination and the application of Article 26 ICCPR in the former Netherlands Antilles, i.e. Curaçao

Interestingly, on the occasion of the ratification of the convention¹²⁷ by the Kingdom, the then Antillean Government made a reservation on the application of Article 25 paragraph c ICCPR related to the enforcement of discriminatory provisions¹²⁸ in the National ordinance on legal and material rights and obligations of civil servants (L.M.A.) 1964. The reasoning behind this adverse attitude towards female civil servants lay in economic and socio-cultural gender-stereotyped motives. This kept the unequal position of women in the public labour sector, which was based on sex and marital status, in place until 1983.¹²⁹

Accordingly, the importance of the protection¹³⁰ provided by Article 26 ICCPR in the former Netherlands Antilles is established through case-law.¹³¹ The cases illustrate the initial resistance of branches of Government towards the realisation of (sex-based) equality. It took a while before the institutions concerned effectuated their obligations to (partly) eliminate (sex-based) discrimination in conformity with the standards and norms under the equality,

124 Banton pointed out that Art. 26 ICCPR upholds a different concept of discrimination than Art. 1 ICERD. The latter departs from an explicit form of substantial approach to discrimination and inequality and this is visible in the formulation of Art. 1 para 4 ICERD. Banton 1999, pp. 107-117.

125 CCPR GC 18 (1989), para. 12.

126 Centrale Raad van Beroep of 7 December 1988 (*Het bestuur der Sociale Verzekeringsbank v M.M.G van S.te G.*), in: Brölmann e.a. (red.) 2008, pp. 847-852; see also Nowak 2006, p. 62.

127 The International Convention on Civil and Political Rights (ICCPR) came into force in the former Netherlands Antilles, as part of the Kingdom, in 1979.

128 It concerned Art. 5 para 3 subsection e, Art. 6 paras. 3-4, Art. 95 and Art. 96.

129 Lopez 1982, pp. 100-102; see also § 2.9.5.

130 The *ALM v V* case illustrates that when a claim was not entered based on Art. 26 ICCPR initially, protection against gender-based discrimination was not provided. GHVj of 15 April 1980, in: TAR 1981, no. 1, pp. 397-399.

131 Van Rijn 1991, pp. 139-146.

i.e. non-discrimination, provisions in the respective human rights conventions. The merits of the cases give insights into the approach of these institutions towards gender-based equal treatment claims by women.

One of the first eye-catching cases was *Yarzagaray v Aruba* of 1980 which raised a plea on equal treatment stemming from inter alia Article 26 ICCPR (and Article 14 ECHR) by a female civil servant and also on the non-applicability of the discriminatory provision under Article 95 L.M.A. 1964. Under this provision female civil servants were statutorily dismissed after marriage. The Court decided that this governmental action did not constitute unequal treatment under Article 26 ICCPR (and Article 14 ECHR). Moreover, it was not convinced of the direct applicability of this provision at country level. Thus, the national provision was then not considered to be in breach of international human rights law.¹³² In its turn the *Klinika Capriles* case concerned the dismissal of a group of female workers from a psychiatric clinic based on their marital status and the argument that they could be replaced by male or single female workers. Contrary to the previous case, the Court at first instance found that the dismissals based on marital status were indeed unreasonable. The Court of Appeal confirmed this position and stated further that the dismissals were unacceptable as the employer already had knowledge of the marital status of the claimants at the time when it hired them.¹³³

In the *Shaw v Sint Eustatius* case I of 1984¹³⁴ the discrepancies in the wages of (un) married female civil servants and their male colleagues, regulated in the Windward Island remuneration decree of 1968, formed the basis of the conflict. A married female civil servant received 20% less in wages than her male colleagues. A claim based on, inter alia, a violation of Article 26 ICCPR,¹³⁵ was presented by Mrs. Shaw who, after remarrying, did not notify the local Executive of the change in her marital status, which would have meant a statutory decrease in her wages. The sex-based and marital status-based ill-treatment which female civil servants endured in respect of their wages was regarded by the Court as discrimination in the sense of Article 26 ICCPR. The Court considered that although the ruling might have far-reaching consequences for the Executive, as a full adaptation of the regulation was required for the elimination of discrimination, yet it could not have come to another judgment solely for that reason.¹³⁶

In the following *Shaw v Sint Eustatius* case II, the Civil Service Tribunal considered the distinction in wages based on sex and marital status among civil servants to be an infringement of Article 26 ICCPR. The Tribunal pointed out, however, that it was up to the legislature to amend this inequality within a reasonable time, as the Tribunal considered itself by then not authorised to determine this. If the legislature failed to comply herewith,

132 Gerecht in Ambtenarenzaken in de Nederlandse Antillen (Aruba) of 25 February 1980, in: *Justicia* 1981, p. 122-124 (*Yarzagaray v Aruba*).

133 Despite many attempt I was not able to retrieve this decision. Only an elaboration on its merits in an article was found. See Lopez 1982, pp. 98-99.

134 Gerecht in Ambtenarenzaken in de Nederlandse Antillen of 30 August 1984, in: *TAR* 1984, no. 1, pp. 231-234 (*Het Bestuurscollege van het EG. Sint Eustatius v Shaw I*).

135 The claim was also based on Arts. 3 and 7 ICESR. These provisions were not considered to be directly applicable in the Antillean legal system. *Ibid.*, para. 7.

136 *Ibid.*, paras. 9-10.

the Tribunal would then be forced to correct this situation in accordance with Article 26 ICCPR.¹³⁷

The fight against discrimination by single female civil servants in regard to unjustified differentiation in wages continued up until the late 1980s, as the federal Executive failed to correct the injustice which women suffered. Again in the *Roman Catholic Central School Board (RKCS) v Curaçao*¹³⁸ case of 1987 the distinction in the wages of male and female breadwinners in the educational sector was the main issue. The Court of Appeal decided, in accordance with the decision of the Court at First Instance that the differentiation in wages between female and male providers enshrined in the Curaçao Enumeration Teaching Personnel decree of 1971, was in breach of Article 26 ICCPR. So, the decree had to be adapted in accordance with Article 26 ICCPR, whereby the differentials in income could be eradicated. The Court stated once more that this action had to be undertaken by the legislature and the Executive, as important (financial and economic) choices had to be made.¹³⁹

Nonetheless, in 1988 the Civil Service Tribunal was forced to give its assessment in the *Shaw v Sint Eustatius*¹⁴⁰ case II as the inequality in payment persisted, despite the suggestions given to the legislature in 1984. In the end, the Tribunal decided that the unequal treatment based on sex and marital status between civil servants could no longer continue. Subsequently, the equal payment petition of the claimant was honoured. In addition the then intended amendment in the relevant law in which some inequality prevailed, was dismissed out of hand by the Court.¹⁴¹

And through the decision of the Court of First Instance in the *Weverink v Roman Catholic Central School Board (RKCS)* case of 1988,¹⁴² unjustified discrimination against single mothers employed by the Roman Catholic Central School Board, which was subsidised by the local Executive, and against civil servants of the island territory of Curaçao was recognised. At that time female teachers did not receive additional child support (allowance) if they were single parents. The differentiations in wages based on marital status incorporated in the Curaçaoan Enumeration Teaching Personnel decree of 1971, as a specification of the provisions on the wages of civil servants enshrined in the National Ordinance on legal and material rights and obligations of civil servants (L.M.A.) 1964, formed an unjustifiable distinction according to the Court and this constituted a breach with the equality norm enshrined in Article 26 ICCPR.¹⁴³

Yet the case did not lead to general equality treatment among civil servants. This unjustifiable situation was remedied through the judgment of the Supreme Court of 1993. The Supreme Court decided in the *Mathilda c.s. v Roman Catholic Central School Board (RKCS) & EG Curaçao* case that the justification based on the liability of men to provide family support and the role of men as providers, was outdated and in contradiction with the

137 Gerecht in Ambtenarenzaken in de Nederlandse Antillen of 20 December 1984, in: TAR 1985, no. 2, pp. 140-146 m.nt. Alkema and m.nt. R.S.J.M. (*Het Bestuurscollege van het EG. Sint Eustatius v Shaw II*).

138 GHvJ of 22 September 1987, in: TAR-Justicia 1988, no. 3, pp. 119-122.

139 Ibid., para. 3.

140 Gerecht in Ambtenarenzaken in de Nederlandse Antillen of 5 May 1988, in: TAR-Justicia 1988, no. 3, pp. 122-127.

141 Ibid., paras. 13-14.

142 GEA of the Netherlands Antilles (Curaçao) of 9 May 1988, in: TAR-Justicia 1988, no. 3, pp. 127-130.

143 Ibid., paras. 3-4.

(inter)national equality norms, such as Article 26 ICCPR, valid in the Kingdom.¹⁴⁴ In sum, it took both the federal Executive and the legislature, based on the suggestions of the Court, more than a decade to amend the inequality in wages that existed between civil servants based on their sex and marital status.

In regard to most recent cases I have to note that the overall impression is that Article 26 ICCPR, Article 14 ECHR and Article 1 Protocol No. 12 are frequently utilised as a scrutiny mechanism by the Courts.¹⁴⁵ In addition, in other areas governmental decisions are reviewed upon the equality principle, often in cases of unequal treatment in wages and (study) allowances in the (private and public) labour sector.¹⁴⁶ The case of 2010 on inequality based on sexual orientation is of importance in this regard. A female employee disputed namely the position of her employer, the *Capriles Kliniek*, which denied the granting of pension benefits and health care insurance to her spouse and her child, following the provisions in the collective labour agreement of the organisation. Only opposite sex marriages enjoyed these benefits. The claimant considered that the agreement contained an infringement of her equal rights based on her sexual orientation pursuant to Article 1 Protocol No. 12, as her family members were unable to enjoy the benefits concerned: same sex marriage was not recognised in the then Antillean, i.e. Curaçaoan legal system, and the employer excluded same sex couples from the benefits under the agreement.¹⁴⁷

As far as I can make out, the last meaningful cases on gender-based discrimination, which had serious repercussions on governmental positioning and policy in regards to gender equality, dated from the 1990s.

§ 7.7.2 *Non-discrimination and equality in the International Convention on Economic, Social and Cultural Rights (ICESCR): a positive State obligation*

The provisions in the International Convention on Economic, Social and Cultural Rights (ICESCR)¹⁴⁸ addressing equal treatment and non-discrimination are Article 2 paragraph 2 and Article 3. Article 2 paragraph 2 ICESCR is the equivalent of Article 2 ICCPR in respect to social, economic and cultural rights. It contains an accessory provision and it employs a non-exhaustive system of differentiation grounds¹⁴⁹ which is reflected in the use of the term ‘other status.’¹⁵⁰ This terminology creates the possibility of protection against any future ground of differentiation which may result in discrimination.

The UN Committee on Economic, Social and Cultural Rights (CESCR) has given its assessment of the equality and non-discrimination norm based on sex in Article 2 paragraph 2 ICESCR in its General Comment no. 20. Accordingly, the provision covers both direct and

144 HR 7 May 1993, NJ 1995, no. 259, m. nt. E A Alkema.

145 See e.g. GHvJ of 27 October 2009, ECLI:NL:OGHNAA:2009:BK3885; Decision of 8 October 2013, Ghis 62228 – EJ 2/13 – H 155/13, (*B. v S.*) (unpublished).

146 See e.g. the case on the denial of a subsidy petition by a foundation for after school activities. GHvJ of 29 November 2004, ECLI:NL:OGHNAA:2004:BF7112; see also Raad van Beroep in Ambtenarenzaken of 20 September 2007, ECLI:NL:ORBANA:2007:BK2997; Raad van Beroep in Ambtenarenzaken of 17 March 2009, ECLI:NL:ORBANA:2009:BJ6641.

147 GHvJ of 22 June 2010, ECLI:NL:OGHNAA:2010:BM9524. For details on the outcome of this case, see § 10.5.

148 It came into force in the Kingdom on 1 March 1979 (Trb. 1969, no. 100; Trb. 1978, no. 178 (revised version)).

149 The meaning of every ground is considered in CESCR GC 20 (2009), paras. 18-26.

150 CESCR GC 20 (2009), paras. 27-35.

indirect discrimination.¹⁵¹ It stipulated that every State-institution, which is engaged in the supervision of equal treatment, is responsible for the implementation of effective protection and remedy in cases of violation of the rights enshrined in the Convention.¹⁵² States have the obligation:

to adopt special measures to attenuate or suppress conditions that perpetuate discrimination. Such measures are legitimate to the extent that they represent reasonable, objective and proportional means to redress de facto discrimination and are discontinued when substantive equality has been sustainably achieved.¹⁵³

As Nowak remarked, the protection against discrimination in regard to economic, social and cultural rights is of vital importance. Certain social groups are often disproportionately discriminated against when securing their accessibility to the labour or educational market.¹⁵⁴ This is one of the main reasons why a norm addressing sex discrimination is explicitly mentioned in Article 3 ICESCR. The formulation of Article 3 ICESCR is identical to Article 3 ICCPR. It provides protection against sex discrimination connected to the rights set out in the International Convention on Economic, Social and Cultural Rights. The provision upholds a commitment for Member States to create and secure equal economic, social and cultural possibilities for every single citizen, both men and women. This enhances a positive State-obligation,¹⁵⁵ which implies an obligation to undertake measures to ensure the rights of the sexes equally, without any distinction based on sex. This obligation encompasses the respect, protection and fulfilment of these rights as stipulated in General Comment no. 16,¹⁵⁶ as this General Comment explicitly concerns the right to equality of the sexes under Article 3 ICESCR. It reveals the various types of discrimination from which the sexes, but particularly women, suffer.¹⁵⁷ The possibility for the adoption of temporary special measures¹⁵⁸ by the States for the acceleration of equality is explicitly created therein.¹⁵⁹ In the legal system of the former Netherlands Antilles, i.e. Curaçao, Articles 2 and 3 ICESCR, contrary to Article 26 ICCPR and Article 14 ECHR, are not considered to be review instruments in cases suspected discrimination, as they are seen merely as instructions for the State-Government by the judiciary.¹⁶⁰

151 *Ibid.*, paras. 7-10

152 CESCR GC 20 (2009), paras. 36-40.

153 *Ibid.*, paras. 9.

154 Nowak 2006, p. 62.

155 This is explicitly formulated in CESCR GC 16 (2005), paras. 8-9.

156 CESCR GC 16 (2005), paras. 16-21.

157 *Ibid.*, paras. 10-14.

158 This is also the case in the eradication of discrimination, pursuant to Art. 2 ICESCR. See CESCR GC 20 (2009), para. 38.

159 CESCR GC 16 (2005), paras. 15, 35 and 36.

160 See e.g. *Gerecht in Amtenarenzaken in de Nederlandse Antillen* of 30 August 1984, in: TAR 1984, no. 1, para. 7.

§ 7.7.3 Importance of the European Convention on Human Rights (ECHR) for equal treatment: Article 14 ECHR

In the European¹⁶¹ context we have Article 14 ECHR which has found its meaning through case-law. Article 14 ECHR does not contain an equality norm, as it only provides a general provision on the prohibition of discrimination. The grounds on which discrimination is not permitted are defined and, furthermore, the provision qualifies any other ground of unjustifiable distinction, based on a personal characteristic, which has not yet been defined, as a discrimination ground. Even an extensive principle like dignity can come within this regime. The concept of discrimination forms an inherent part of the proportionality test performed by the European Court of Human Rights, in the determination of discrimination of the rights guaranteed in the European Convention on Human Rights.¹⁶²

Nonetheless, the provision has an accessory character, which means that it has a narrow scope. This was the main reason why lesser protection was initially offered through it at the domestic level.¹⁶³ Despite this, it obtained, through implementation and progressive interpretation by the European Court of Human Rights a rather independent status. This resulted ultimately in the expansion of its scope, in spite of the fact that it remained for a long time ‘heavily oriented to a formal equality model, though with the scope to apply stricter standards of scrutiny to certain types of discrimination.’¹⁶⁴

The European Court of Human Rights developed a formula¹⁶⁵ that addresses questions regarding the connection between Article 14 ECHR and the other substantive provisions in the Convention. Due to its autonomous status, its application does not depend on or require the simultaneous violation of a particular provision of the Convention. Through the confirmation of a violation of the non-discrimination norm, a violation of both rights can be affirmed, although the main provision has not been violated. The European Court of Human Rights has also stipulated that in the case where a violation of the particular provision is established, an investigation on the violation of Article 14 ECHR is not necessary, enhancing a widening of the applicability of Article 14 ECHR. Through the *EB v France* case¹⁶⁶ of 2008 the Court has gone even further by stating that this non-discrimination provision applies to rights which a State has voluntarily accepted in addition to the rights enshrined in the Convention. This is confirmed in the *Opuz v Turkey* case of 2009.¹⁶⁷

161 There is also the Charter of Fundamental Rights of the European Union of 2000 (2000/C 364/01), adapted in 2007 (2007/C 303/01). Equality and non-discrimination are guaranteed in Arts. 20- 26. Equality between men and women is enshrined in Art. 23 European Charter. Pursuant to Art. 51 the Charter applies to the institutions and bodies of the Union (...) and the Member States only when they are implementing Union law.

162 Smyth 2013, pp. 67-73.

163 See e.g. *Gerecht in Ambtenarenzaken in de Nederlandse Antillen (Aruba)* of 25 February 1980, in: *Justicia* 1981, pp. 122-124 (*Yarzagaray v Aruba*).

164 O’Connell 2009, p. 212.

165 Through case-law the following is formulated: ‘Article 14 complements the other substantive provisions of the Convention and the Protocols. It has no independent existence, since it has effect solely in relation to “the enjoyment of the rights and freedom” safeguarded by those provisions. Although the application of Art. 14 does not necessarily presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter.’ Van Dijk e.a. (eds.) 2006, pp. 1027-1031.

166 Judgment of 22 January 2008, Appl. no. 43546, para. 48 (*EB v France*).

167 Judgment of 9 September 2009, Appl. no. 33401/02 (*Opuz v Turkey*); see also O’Connell 2009, pp. 215-217.

The European Court of Human Rights considers differentiations in treatment, as a violation of the principles of equality and non-discrimination, through a scrutiny model. It performs a comparability test to establish whether there is unequal treatment. It determines whether this treatment comes under one of the prohibited grounds.¹⁶⁸ The elements taken into consideration are whether there: (1) is a differentiation in treatment;¹⁶⁹ (2) are equal cases; (3) is an absence of objective and reasonable justification;¹⁷⁰ (4) is a legitimate aim which is not pursued; and (5) is the non-existence of a reasonable relationship of proportionality between the means employed and the aim sought to be realised.¹⁷¹ Moreover, the Court takes into account the margin of appreciation of the States in the stipulation of the justification in differential treatment. Each element has been addressed and defined through case-law.

According to O'Connell, a development from the formal equality approach towards a more substantive approach on the equality concept enshrined in Article 14 ECHR by the European Court of Human Rights has been noted. By this means, the provision is being transformed into an effective non-discrimination norm, through which it is recognised that it also covers issues of indirect discrimination¹⁷² and intersectionality, where effective protection is provided to vulnerable groups in society. Even affirmative action measures, undertaken by Member States, fall within its scope. Effectively, any type of distinction can currently be scrutinised by the European Court of Human Rights, and this does not constitute a problem as it applies a 'sliding scale approach' to justification.¹⁷³

§ 7.7.3.1 Article 1 Protocol No. 12 of the European Convention on Human Rights

Several additional protocols on the European Convention on Human Rights have meanwhile been adopted. These protocols refine the interpretation and expand the scope of implementation of the provisions in the Convention. A good example of this is Protocol No. 12, which entered into force in 2005 in the Kingdom.¹⁷⁴ The Protocol mainly upholds one general independent non-discrimination provision, which is its Article 1, as a remedy

168 Henrards 2008, p. 248-254; Van Dijk e.a. (eds.) 2006, pp. 1034-1035; Judgments of 9 October 1979 and 6 February 1981, Appl. no. 6289/73 (*Airey v Ireland*).

169 An example of a judgment regarding this element is the judgment of 6 April 2000, Appl. no. 34369/97 (*Thlimmenos v Greece*).

170 For an example on elements 2 and 3, see the judgment of 30 November 2000, Appl. no. 15919 (*Edoardo Palumbo v Italy*).

171 Elements 4 and 5 were addressed in the judgment of 23 July 1968, Appl. nos. 1474/62; 1677/62; 1691/62; 1769/63; 2126/64 (the *Belgian Linguistic* case). Through this case a scheme was developed consisting of three elements. The (a) perceived differential treatment and (b) the distinction, which does not have an underlying objective and reasonable justification in regard to the aim and (c) the proportionality requirement. A reasonable proportionality between the means employed and the aim sought has to be present, otherwise a violation is present. See Van Dijk e.a. (eds.) 2006, pp. 1034-1045; O'Connell 2009, pp. 217-219.

172 Since the *Thlimmenos* case of 2000 the Court has also been dealing with challenges related to indirect discrimination. The recognition of indirect discrimination has been permanently established through the judgment of 13 November 2007, Appl. no. 57325/00 (*D.H. and Others v Czech Republic*), paras. 175-180.

173 O'Connell 2009, pp. 211-229.

174 The process for the adoption of this Protocol, as a broadening of the scope of the non-discrimination provision enshrined in the ECHR, was a long one. De Fey & Kellermann 2001 on www.art1.nl/artikel/1884, downloaded in September 2011; see also Thomassen 2004, pp. 133-135; Draft Protocol No. 12 to the European Convention on Human Rights, 14 January 2000, Doc. 8614; the Committee was in favour of the inclusion of the principle of equality between men and women and new discrimination grounds, such as sexual orientation. This Protocol came into force in the Kingdom of the Netherlands on 1 April 2005 (Trb. 2001, no. 18).

for the ‘defects’ of Article 14 ECHR. It does not modify or replace Article 14 ECHR in any sense. The relationship between Article 14 ECHR and Article 1 Protocol No. 12 is established through Article 3 Protocol No. 12. For the competency of the European Court of Human Rights, when answering the question whether Article 14 ECHR or Article 1 Protocol No. 12 is applicable in a certain case, particularly in regard to matters of interpretation, Article 32 ECHR provides the necessary solution.

The most striking shortcoming of the Protocol is the absence of the equality principle from its main text. The adoption of the equality principle in the Preamble to the Protocol as a compromise between the Member States formed the solution to this omission. All in all, it was not seen as a major obstacle, because it was considered that the principle had already established its interpretation and its importance through the case-law¹⁷⁵ of the European Court of Human Rights.¹⁷⁶ The interpretation of the working of Article 1 Protocol No. 12 is derived from the case-law of the Court on Article 14 ECHR. Its grounds of discrimination are identical to those of Article 14 ECHR, while the provision can be considered as having a non-exhaustive system of discrimination grounds. This is visible in the phrase ‘on any grounds such as’, as the States explicitly decided against the incorporation of new grounds in the provision.

Like Article 14 ECHR, this provision can be employed at the domestic level in unequal treatment cases for the protection of individuals against discrimination. In the case of the former Netherlands Antilles, i.e. Curaçao, the Courts review claims of discrimination against this provision, as it has binding force.¹⁷⁷ As a matter of fact, all types of governmental and private acts are being revised on the basis of Article 1 Protocol No. 12 after the initial narrow approach of the Courts. Moreover, State agencies are in all circumstances bound to comply with the negative obligation not to discriminate, while the existence of positive obligations to introduce positive actions for the inclusion of underprivileged social groups is not entirely excluded either.¹⁷⁸

§ 7.7.4 *The revised European Social Charter (ESC): Article E ESC*

The revised European Social Charter (ESC)¹⁷⁹ provides for a general provision prohibiting discrimination based on, inter alia, sex and race in regard to the economic, social and cultural rights in the Convention.¹⁸⁰ This prohibition is prescribed in Article E ESC, following the formulation of Article 14 ECHR. Like the latter, Article E ESC does not use the term ‘discrimination’ but the term ‘distinction’. It is an accessory provision. In the case of Curaçao it provides protection in situations of discrimination on the areas regulated in Articles 1 (employment), 5 (the right to organise), 6 (the right to bargain collectively) and 16 (the right of the family to social, legal and economic protection) of the Convention.¹⁸¹

175 Judgment of 23 July 1968, Appl. nos. 1474/62; 1677/62; 1691/62; 1769/63; 2126/64 (the *Belgian Linguistic*).

176 Parliamentary report II 2001/2002, 28 100 (R 1705), no. 129 & no. 1, pp. 3-4.

177 In the case of Curaçao see e.g. GHvJ of 27 October 2009, ECL:NL:OGHNA:2009:BK3885; Decision of 8 October 2013, Ghis 62228 – EJ 2/13 – H 155/13, (*B. v S.*) (unpublished).

178 Van Dijk e.a. (eds.) 2006, pp. 990-992.

179 Its revised version came into force in the Kingdom on 1 July 2006 (Trb. 2004, no. 13).

180 Previously this prohibition of discrimination was to be found in the Preamble to the Charter of 1961. Harris & Darcy 2001, p. 21.

181 Harris & Darcy 2001.

Furthermore, it has a non-exhaustive system of differentiation grounds stemming from the phrase ‘other status’.

The Committee which supervises the realisation of the European Social Charter has used this non-discrimination norm ‘to affirm the justiciable nature of social rights which, in principle, are subject to progressive realisation’.¹⁸² The Kingdom has thus far reported on numerous occasions on the implementation and effectuation of the applied provisions in the former Netherlands Antilles, i.e. Curaçao.¹⁸³ In doing so, the Committee concluded several times¹⁸⁴ that, in the application of Article 1§ 2 ESC, the legal framework of the former Netherlands Antilles, i.e. Curaçao ‘to ban employment discrimination based on sex was inadequate’ and that Article 26 ICCPR and Article 14 ECHR ‘constituted an insufficient legal basis and that employment discrimination must be the subject of a more precise legal prohibition’.¹⁸⁵

§ 7.8 Equality and non-discrimination from a sex and gender perspective

In spite of the recognition of the equal rights of women in the Universal Declaration of Human Rights, the gender-neutral formulation of the equality and non-discrimination principles in the Universal Declaration and other human rights treaties proved to be insufficient and incapable of guaranteeing real equality for men and women.¹⁸⁶ Arguably, the emphasis put on sex and gender differences was by its nature not in harmony with, *inter alia*, the principle of the Universal Declaration, which proclaims the universality of fundamental rights based on the eradication of discrimination.¹⁸⁷ In itself the Declaration does not form an obstacle for a more gender-sensitive approach for fundamental rights.¹⁸⁸

The Women’s Convention amplifies the general equality and non-discrimination principle from a sex and gender perspective. It intends to have an emancipating and liberating effect on women.¹⁸⁹ According to Cook, the uniqueness of this Convention:

is its underlying recognition that women have historically been subjected not simply to specific areas of disadvantages, but to systemic discrimination and oppression founded on hostile stereotypes and presumptions rooted in cultures often reinforced by political and religious convictions. Accordingly, the goals of the Women’s Convention are not only to redress inequities in a piecemeal fashion, but also to affect negative stereotyping and presumptions about women’s capacities and special functions that result in systemic denial of women’s human rights and fundamental freedoms.¹⁹⁰

182 De Schutter 2009, pp. 438-441.

183 For its comments on the periodic reports of the Kingdom, including the former Netherlands Antilles, visit www.coe.int/t/dghl/monitoring/socialcharter/conclusions/ConclusionsYear_en.asp, last visited on 15 May 2015.

184 See e.g. ESC Conclusions XVI-1, The Netherlands (including the Netherlands Antilles and Aruba), 2002; ESC Conclusions XVII-2, The Netherlands (including the Netherlands Antilles and Aruba), 2005; ESC Conclusions XVIII-1, The Netherlands (including the Netherlands Antilles and Aruba), 2006.

185 ESC Conclusions XVII-2, The Netherlands (including the Netherlands Antilles and Aruba), 2005, p. 53.

186 Gerhard 1994, pp. 89-92; Arts e.a. 1998, pp. 1023-1027.

187 Yotopoulos-Marangopoulos 1994, pp. 124-125.

188 Arts e.a. 1998, pp. 1027-1035.

189 Cook 1994 (a), pp. 29-32; Cook 1994 (b), pp. 11-12.

190 *Ibid.*, p. 31.

The realisation and establishment of equal rights among men and women no longer have to imply the full assimilation of the position of white, heterosexual, Christian men by women. For equal treatment for women the autonomy of the female individual is the focal point.¹⁹¹ Van den Brink proposes though that, for the accomplishment of real equality, the categorisation and differentiation based on gender as a distinctive ground should be eliminated altogether. She suggests a process of the elimination of the sex-construct or ‘de-gendering’ in both legal and social constructs. As such, a more asymmetrical approach to the concept of equality is indispensable.¹⁹²

I think, following Huls and Holtmaat, that women should make claims on their rights to be different. With this, the self-evident claims on equality and the dynamics of the gender-neutral equality and non-discrimination norms will change.¹⁹³ A process in favour of the assimilating effect of the application of the equality norm has to take place.¹⁹⁴ The Women’s Convention provides a legal framework from a gender perspective for the concept of equality and it provides legal instruments, particularly Article 2 paragraph f and Article 5, which can help to achieve substantive and transformative equality from a women’s perspective. It has established a comprehensive international bill of human rights for women and it gives guidelines to States for the achievement of real freedom and dignity for women.

§ 7.8.1 *The Women’s Convention and its framework: the Preamble and Article 1*

The most essential factors influencing the development of women are to be found in the Preamble to the Women’s Convention.¹⁹⁵ The right to equal treatment and non-discrimination of women in the enjoyment of their political, social, economic and cultural rights is steadfastly reaffirmed.¹⁹⁶ Even the most distinctive role of women, their capacity to bear children, is explicitly acknowledged. The responsibility of childrearing, however, is seen as the responsibility of both men and women. Through this, the roles of women which unfold in the private sphere are brought into the legal (public) sphere.¹⁹⁷ Awareness about the transformation of the traditional role of men and women in society is required for the achievement of real gender equality.¹⁹⁸

In its turn, Article 1 Women’s Convention forms, together with Articles 2, 3, 5 and 24¹⁹⁹ Women’s Convention, the framework for the substantive provisions of the Convention. Article 1 Women’s Convention contains a description of the concept of discrimination from a gender and women’s perspective.²⁰⁰ It follows the definition enshrined in the Convention on the Elimination of all forms of Racial Discrimination (ICERD), with the difference that

191 Witteveen 2000, p. 179-181; Holtmaat 2000 (b), pp. 255-256.

192 Van den Brink 2000, pp. 29-44.

193 Huls 2000, pp. 238-240; consider also Holtmaat 2000 (b), pp. 256-259.

194 Holtmaat 2000 (b), pp. 262-263.

195 Chinkin & Rudolf 2012, pp. 35-49.

196 Preamble, para. 3 repeats the rights that are secured respectively in Art. 3 ICCPR and Art. 3 ICESCR.

197 Preamble, para. 13.

198 Through this statement the connection was with Art. 5 Women’s Convention.

199 Also Art. 24 Women’s Convention is one of the framework provisions. It concerns the obligation of State-institutions to enact national and international measures and transpose the rights set out in the Convention into the domestic legal system. See Byrnes 2012 (c), pp. 539-545.

200 Cook 1994 (a), p. 33.

it considers discrimination against women in both the public and private spheres, as most of the discrimination suffered by women occurs in the private domain.²⁰¹

The relationship between this Convention and the International Bill of Human Rights, where discrimination based on gender is explicitly forbidden, is undeniable. The Women's Convention objective is the elimination of all forms of 'distinction, exclusion or restriction made on the basis of sex', which means the prohibition of both direct and indirect discrimination based on gender.²⁰² The formulation of Article 1 Women's Convention reveals that the prohibition of discrimination is not solely based on the ground of sex, but also on the discrimination experienced generally by women, which is expressed in the subsequent phrase that says that 'any distinction (...) has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status'.

The Article suggests further that the prohibition is applicable to the fundamental rights and freedoms mentioned in the Women's Convention and any other rights of women. Any sign of distinction, exclusion or restriction of women qualifies as 'suspect' classifications, where a strict scrutiny should be performed at a possible review.²⁰³

Article 1 Women's Convention, when considered with the other substantive provisions of the Convention, prohibits both direct and indirect gender-based discrimination and ensures formal equality. The negative consequences of indirect discrimination caused by socio-cultural differences between men and women are revealed, particularly when one considers this provision in correlation with Article 5 paragraph a Women's Convention.²⁰⁴ The Committee, through its General Recommendations, provides a rather flexible approach on the meaning of the concepts 'equality' and 'non-discrimination'.²⁰⁵ Even the existence of intersectional and multiple discrimination, as experienced by certain groups of women, is recognised.²⁰⁶

§ 7.8.1.1 The broadening of the scope of Article 1 Women's Convention

In General Recommendation no. 19, the scope of the discrimination definition in Article 1 Women's Convention was broadened by the inclusion of the aspect of violence against women.²⁰⁷ The provision's non-exhaustive system of discrimination grounds, which is expressed through the phrases '... any distinction, exclusion or restriction made on the basis of sex' and 'of human rights (...) or any other field' made this possible. The reference to 'on the basis of sex' does not at all require the invocation of sex or a sex-related aspect for a differential treatment to qualify as discrimination under the Convention.²⁰⁸ This leaves a margin for the creation of reasonable and justifiable grounds for any form of distinction, by the Committee through its General recommendations with which States have to comply.

201 Byrnes 2012 (a), pp. 53-59.

202 It also includes the term 'gender' which at the time of the drafting of the Convention was not internationally applied. *Ibid.*, pp. 59-60.

203 Loenen 1994, pp. 1-4; see also Boerefijn 2005, pp. 9-11.

204 *Ibid.*, pp. 5-6.

205 For a consideration on the flexibility on the usage of the different terms for the concepts 'equality' and 'non-discrimination', see Byrnes 2012 (a), pp. 62-66.

206 See e.g. CEDAW GR 25 (2004), para. 12; CEDAW GR 26 (2008), para. 14; CEDAW GR 27 (2010), para. 13; CEDAW GR 28 (2010), paras. 18, 19.

207 For an extensive elaboration on the issue of violence against women, see Chinkin 2012 (b), pp. 443-474.

208 Loenen 1994, pp. 12-13; Byrnes 2012 (a), pp. 59-62.

Through its Concluding Comments on the State-reports, suggestions and recommendations are given on how State-agencies should tackle the issue of gender-based violence against women.²⁰⁹

Prior²¹⁰ to General Recommendation no. 19 the Committee had addressed this issue in General Recommendation no. 12.²¹¹ In General Recommendation no. 19 it went further though by giving the first human-rights based interpretation of the phenomenon of gender-based violence against women. In paragraph 6 it is stated:

The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats or such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

The prohibition on violence against women does not only apply to violence perpetrated and condoned by public authorities, but also to the violence inflicted by non-State actors, which involves violence perpetuated in the family²¹² and within the community.²¹³ The connection between gender-based violence as a form of discrimination and patriarchal attitudes and gender-stereotypes at country level has correctly been analysed by Biholar.²¹⁴ In addition, the right of women to physical integrity, which was not included in the Convention, is ensured in General Recommendation no. 19.²¹⁵

Regional human rights institutions have adopted the views and the case-law of the Committee on the issue of gender-based violence as discrimination against women. In the *Opuz v Turkey* case²¹⁶ of 2009, the European Court of Human Rights declared that the domestic violence suffered by the victim and her mother, which was also conducive to the killing of the mother, was gender-based discrimination and that the victim's rights to life, physical and mental integrity superseded the rights of the perpetrator. This was a form of discrimination against women which constituted a violation of both Article 14 ECHR and Article 1 Women's Convention.²¹⁷

In 1993 the Declaration on the Elimination of Violence against Women (hereafter: DEVAW), the first international document exclusively dedicated to gender-based violence, was adopted. Although the DEVAW lacks legal binding force, its moral authority provides the required respect and recognition. It gives guidelines to all UN Member States on undertaking (legal) measures to address gender-based violence. Moreover, the States are obliged to comply with the obligations under this declaration.²¹⁸ Positive developments at regional levels to address this issue have also been noted, such as the adoption of the

209 Cook 1994 (b), pp. 13, 20-21; Chinkin 2012 (b), pp. 467-474.

210 Chinkin 2012 (b), pp. 443-447.

211 CEDAW GR 12 (1989); Loenen 1994, pp. 7-8.

212 Under 'violence in the family' lie domestic, intrafamilial and intimate partner violence which is perpetuated by persons who are related to each other through blood or intimacy.

213 CEDAW GR 19 (1992), paras. 8, 9; Chinkin 2012 (b), pp. 454-462.

214 Biholar 2013.

215 Boerefijn 2005, p. 10.

216 Judgment of 9 September 2009, Appl. no. 33401/02 (*Opuz vs Turkey*).

217 *Ibid.*, paras. 147, 185-187, 200 and 202.

218 GA A/ RES/48/104 of 20 December 1993; Evenhuis & Van Eijk 2001, p. 11-12; Chinkin 2012 (b), pp. 447-450.

American Convention on the Prevention, Punishment and Eradication of Violence Against Women of 1994 (the Convention of Bélem do Pará) and the European Convention on the prevention and combating of violence against women and domestic violence of 2011 (the Istanbul Convention).²¹⁹

§ 7.8.2 *Articles 2 and 3 Women's Convention: the State obligation to enact measures in all fields*

Article 2 Women's Convention, as the core provision of the Convention, obliged State-parties to take all appropriate (legal) measures to condemn²²⁰ and eliminate discrimination against women in all areas. This includes the enactment of temporary special measures for the achievement of real equality. Equal treatment among the genders must first be ensured in the Constitution of the State and other domestic legal measures. The protection of women, like men, against gender-based discrimination by public institutions and third parties must be present.²²¹

The two types of obligations for State-organs under Article 2, paragraphs a, b, c and g, Women's Convention reinforce instructions for domestic legislatures to adopt legislation to prevent discrimination against women.²²² In particular paragraph a, which implicates the obligation of States to incorporate the Convention in their domestic legal system 'or to give it otherwise appropriate legal effect within their domestic legal order'.²²³ Paragraphs d and e contain the obligation of the due diligence of the State to develop policy, which can provide the necessary protection to women against discrimination by both State and non-State actors.²²⁴ States have a great margin of appreciation in the realisation of these obligations though.²²⁵

Paragraph f constitutes the State obligation to undertake adequate measures to abolish harmful gender stereotypes. With this provision all legal, cultural or social justifications or grounds for discrimination against women should be nullified. The Convention contains two other Articles²²⁶ which deal with the effects of gender stereotypes on the development of women within society.

The obligation upon State-members to take 'all appropriate measures' in all fields, to ensure the development and advancement of women, so that women can enjoy their fundamental rights and freedoms fully in equality with men, is ensured in Article 3. This

219 The Council of Europe adopted the Istanbul Convention on 11 May 2011 (ECT No. 210, 2011). The Kingdom signed this Convention on 14 November 2012 (Trb. 2012, no. 233). It is now engaged in the ratification process, which is planned to be finalised in 2014. This European Convention will be applicable in the entire Kingdom, including Curaçao. See Parliamentary report II 2012/2013, 33 400 V, K; Parliamentary report I 2013/2014, 33 750 V, B.

220 The use of this term places the gender-based discrimination on the level of racial discrimination. Byrnes 2012 (b), p. 75.

221 See e.g. Alkema & Zaaijer 1994, p. 15; Boerefijn 2005, pp. 11-12; Byrnes 2012 (b), pp. 71-99.

222 Byrnes 2012 (b), pp. 78-85.

223 Ibid., p. 79.

224 This issue is also implicitly considered in Art. 2 para. f and Art. 5 Women's Convention; Byrnes 2012 (b), pp. 85-90.

225 Alkema & Zaaijer 1994, p. 16.

226 Article 5 para. a and Art. 10, para. c, Women's Convention. The scope of Art. 5 Women's Convention applied in the Curaçao context is extensively discussed in Chapter 9.

also includes activities not mentioned in the Convention.²²⁷ Article 3 Women's Convention forms the foundation for the human rights-based approach on women's development and advancement and the adoption of a gender mainstreaming approach.²²⁸

Like Article 2 Women's Convention, Article 3 lays down a comprehensive obligation to eradicate discrimination against women in all its forms and in all fields, as it acknowledges the influence of social, economic and cultural constructs in the subordination of women. By this, a connection is made with Article 5 Women's Convention which deals with the eradication of wrongful gender stereotypes as these undermine the liberation and development of women.²²⁹ Therefore, Article 3 Women's Convention upholds an obligation to ensure the rights of women by positive State actions. These are permanent measures to guarantee the proper advancement of women. A connection is made in this respect between this provision and Article 4 Women's Convention.²³⁰ The State obligation towards the development and enjoyment of fundamental rights and freedoms by all women, including disabled women²³¹ and older²³² and battered women, comes within the scope of Article 3. All in all, in spite of its imprecise language the provision delivers enough directives for a 'progressive interpretation that supports women's advancement and full development'.²³³

§ 7.8.2.1 Contributions of the Committee on Article 2 Women's Convention

The meaning and nature of State obligations under Article 2 Women's Convention is refined and further clarified by the Committee. In General Recommendation no. 6 the Committee suggests that States have to 'establish and/or strengthen effective national machinery, ... commitment and authority to:' (a) give advice on policies directed to women; (b) monitor the situation of women; and (c) help formulate new policies and effectively carry out strategies to eliminate discrimination against women.²³⁴ In addition, in General Recommendation no. 26 the rights of migrant women under Article 2 Women's Convention are covered.²³⁵

It is in General Recommendation no. 28 that explicit attention is dedicated to the clarification of the scope and meaning of Article 2 Women's Convention. States have the obligation to take all appropriate means to protect, promote, and respect the most fundamental rights of women and to refrain from taking actions which can lead to violation of the rights proclaimed in the Convention.²³⁶ The term 'sex and gender discrimination' is defined as '...although the Convention only refers to sex-based discrimination, interpreting article 1 together with articles 2 (f) and 5 (a) indicates that the Convention covers gender-based discrimination against women'.²³⁷ Discrimination perpetuated by non-State actors is to be dealt with as though States have a due diligence obligation to prevent this type

227 Chinkin 2012 (a), pp. 103-107.

228 *Ibid.*, pp. 108-114.

229 *Ibid.*, p. 106.

230 CEDAW GR 25 (2004), para. 24.

231 CEDAW GR 18 (1991).

232 CEDAW GR 27 (2010); CEDAW Unofficial announcement General Recommendation adopted on Older Women, 19 October 2010.

233 Chinkin 2012 (a), p. 121.

234 CEDAW GR 6 (1988), para. 1.

235 CEDAW GR 26 (2008), paras. 25-26.

236 CEDAW GR 28 (2010), paras. 9, 10 and 16.

237 *Ibid.*, para. 5.

of discrimination as well.²³⁸ All newly emerging forms of discrimination, including intersectional discrimination, come under the scope of Article 2.²³⁹ Moreover, the basis is put in place for the creation of all appropriate measures, including temporary legal measures, to address the oppression which women suffer.²⁴⁰

§ 7.8.3 Article 4 Women's Convention: Temporary Special Measures

The introduction and use of temporary special measures by State-members for the further development and advancement of women and against discrimination is laid down in Article 4 Women's Convention.

Pursuant to Article 4 Women's Convention State-members are permitted, within a margin of appreciation, to take temporary special measures to eliminate past and present discrimination against women, and to create real equality between the genders and to compensate women. These measures do not represent a violation of the equality principle. A substantive and asymmetrical approach to the equality principle is defended in this way, as the aim is the creation of opportunities for women.²⁴¹ Otherwise, the consideration that these measures are exceptions to equality norms would imply that equality norms based on male-dominant perspectives are the standards by which the treatment which other social groups receive are measured. Temporary special measures are just appropriate applications of the principle of equality for weaker social groups, according to Schöpp-Schilling.²⁴²

There are two measures under Article 4 Women's Convention which are (1) the introduction of temporary special measures to accelerate *de facto* equality among the sexes, and (2) special measures directed to the issue of maternity. These measures differ in their purpose and their conceptual basis. The first category comprises promotional measures to effectuate the equal treatment of women. They should be temporary in nature for the realisation of *de facto* equality for women. The second category forms the ground for the introduction of measures for the protection of maternity and 'they are not of a temporary nature.'²⁴³

According to Heringa, the provision upholds eight²⁴⁴ relevant aspects, and for their realisation a proactive Executive is required. The actions undertaken by the Executive require the (appropriate) allocation of sufficient funds for the creation of social justice²⁴⁵ and the advancement of women. Article 4 Women's Convention provided the States with a legal argument for the eventual introduction of these measures.²⁴⁶ Cook argues that these

238 Ibid., para. 13.

239 Ibid., para. 15 in conjunction with para. 18.

240 Ibid., paras. 20, 23, 36.

241 Holtmaat 2003, pp. 214-219.

242 Heringa 1994, pp. 41-42; Schöpp-Schilling 2003, pp. 15-27.

243 Raday 2012, pp. 124-126, 136-139.

244 The aspects are (1) the issue of the definition of discrimination against women, (2) the better protection of women against discrimination, (3) the aim of the special measures, which is acceleration of equality between men and women, (4) the temporary characteristic of the special measures, (5) the non-formulation of further requirements for the adoption of special measures, (6) the protection of maternity, (7) the exclusion of negative effects of special measures for women and (8) the elimination of stereotypical ideas.

245 Raday distinguishes four theories of social justice, namely distributive justice, compensatory justice, social utilitarianism and liberalism and efficiency. The allocation of funds comes within the scope of the first two types of social justice. Raday 2003, pp. 35-40; see also Cook 2003, pp. 121-122.

246 Heringa 1994, pp. 31-34.

measures form an obligation for States when they deal with the effective achievement of the equal rights of women as enshrined in the Women's Convention.²⁴⁷ Heringa disputes this, as he noted that the provision 'facilitates and does not impose!' the introduction of such measures for the realisation of equality.²⁴⁸ It is generally accepted though that States have an obligation to introduce temporary special measures, but that this originates from the framework of the Convention, together with the obligations set out in the substantive provisions.²⁴⁹

The term 'temporary' implies that the adoption of the measures by States is connected to a certain time-frame, which suggests that they are discontinued at the moment when the situation of the target group has been ameliorated; otherwise they constitute a form of discrimination. They can be used as pilot projects though and later on transformed into permanent measures.²⁵⁰ However, if these measures are based on the natural differences between the sexes, then they could never be temporary, such as the measures based on Article 4 paragraph 2 Women's Convention. There is not much clarity on the duration of a measure for the realisation of substantive equality, as often the introduction of these measures requires the allocation of resources for the creation of an infrastructure that supports equality of opportunities.²⁵¹ Measures and policies with a more permanent character²⁵² should not be confused with temporary special measures and the goal the latter attempt to reach. Finally, the term 'special' refers to measures that 'serve a specific goal', and they ought to be periodically monitored as to their effectiveness.²⁵³

§ 7.8.3.1 Contributions of the Committee on Article 4 Women's Convention

In the substantive approach to equality, the introduction of temporary special measures should be aimed at the creation of opportunities as a necessity for the achievement of real equality. Article 4 paragraph 1 Women's Convention refers to the formal and substantive approaches of equality. In General Recommendation no. 25 the interpretation of Article 4 paragraph 1 Women's Convention is set out.

General Recommendation no. 5 contains the initial recommendation for States to take the necessary actions to strengthen the implementation of the Convention by the adoption of temporary special measures for the advancement of women in different areas.²⁵⁴ Through General Recommendation no. 8 States are recommended to introduce 'direct measures in accordance with article 4' for the fulfilment of the obligation under Article 8 Women's Convention.²⁵⁵ In the subsequent General Recommendation no. 23 it is suggested that all appropriate measures should be taken in political and public life. 'States parties should identify and implement temporary special measures to ensure the equal representation of women

247 Cook 2003, pp. 140-141.

248 Heringa 2003, p. 144.

249 Holtmaat 2003, p. 215.

250 *Ibid.*, p. 225.

251 Freeman 2003, pp. 99-107; Cook 2003, p. 127.

252 These measures find their ground in e.g. Arts. 3, 10 and 11 Women's Convention; Yotopoulos-Marangopoulos 1994, pp. 126-127; Raday 2012, pp. 133-134.

253 CEDAW GR 25 (2004), para. 21; see also Fredman 2003, p. 117; Raday 2012, pp. 127-129.

254 The use of positive actions, preferential treatment and quota systems are suggested. CEDAW GR 5 (1988).

255 CEDAW GR 8 (1988).

in all fields covered by articles 7 and 8.²⁵⁶ Despite the use of inconsistent terminology, the message about the enactment of temporary special measures to eradicate the disadvantages experienced by women due to past societal constructs is evident.

Finally, with the adoption of General Recommendation no. 25 the Committee further explained the meaning and nature of Article 4 Women's Convention, to facilitate the use of the provision by State-members.²⁵⁷ This Recommendation noted:

(...) The purpose of Article 4, paragraph 1, is to accelerate the improvement of the position of women to achieve their de facto and substantive equality with men and to effect structural, social and cultural changes necessary to correct past and current forms and effects of discrimination against women (...)²⁵⁸

The Committee provides also suggestions to the States in regard to the implementation of Article 4 paragraph 2 Women's Convention in their domestic legal systems.²⁵⁹ They are requested to use the term 'special temporary measures' in their reports to avoid any confusion on the adoption and effectuation of these measures and 'they should evaluate the potential impact of temporary measures with regard to a particular goal within their national context and adopt those special measures which they consider to be the most appropriate in order to accelerate the achievement of de facto or substantive equality'.²⁶⁰

More importantly, States are urged to introduce provisions in their constitutions or national legislation which permit the enactment of these measures.²⁶¹ The connection between obligations set out in Article 4 and Article 5 Women's Convention is set out in paragraph 38 of General Recommendation no. 25 where the Committee stated 'that temporary special measures should be adopted to accelerate the modification and elimination of cultural practices and stereotypical attitudes and behavior that discriminate against or are disadvantageous for women'.

§ 7.9 Conclusion

Considering that the equality and non-discrimination norms, together with the rule of law, form the cornerstone of every democratic society and the basis of the Women's Convention, I performed an analysis on their meaning and implication in the Curaçaoan legal system, starting from the human rights-based framework which I presented in Chapter 5. According to its 'PANEL' analysis the non-discrimination norm is the most critical element for the respect, fulfilment and protection of human rights. The effectuation of these norms leads to necessary transformations in society. My findings on the status and effectiveness of the

256 CEDAW GR 23 (1997), para. 43.

257 CEDAW GR 25 (2004).

258 Ibid., para. 15.

259 Ibid., paras. 25-39.

260 The terminology applied varied between States. To illustrate the variety in terminology, see the use of the terms 'preferential treatment' and 'affirmative action' previously in this research. The Committee on the Elimination of Discrimination Against Women, through this General Recommendation, prefers the use of the term 'special measures' in accordance with the term formulated in the Women's Convention. CEDAW GR 25 (2004), paras. 25, 27.

261 CEDAW GR 25 (2004), para. 31.

equality and non-discrimination norms from a human rights perspective at country level can be presented as follows.

The theoretical framework submits that the principle of equality, with its dynamic and progressive background, prescribes that individuals should be treated equally, regardless of their creed, ethnicity, religion, gender, abilities or any other ground. Yet, in cases of differences people should be treated differently. There are limitations, responsibilities and margins of appreciation that the State and citizens have to take into consideration when presenting a claim of unequal treatment. The dichotomy between the formal and the substantive approaches on equality determines the protection that is offered to individuals by the branches of Government. Nowadays a shift from the formal approach towards a more substantive or transformative approach to equality has been registered for the realisation of an egalitarian society based on the principle of social justice. The creation of equal opportunities or the transformation of discriminatory socio-cultural structures should thus be the main goal of the State-Government. This can be accomplished through the introduction of positive actions towards the advancement of vulnerable groups in society, such as women.

Discrimination presents itself by differential treatment based on personal characteristics that cannot be erased or denied. This does not suggest an absolute exclusion of differentiation and diversity though. Only distinctions that do not have a reasonable justification and a legitimate purpose are forbidden. In these cases protection offered by and claimed from the State can be demanded. The introduction of the concept of indirect discrimination has extended the protection of (weaker) social groups against unjustified unequal treatment and differentiation. Next to the prohibition of (in)direct discrimination, there also exists the possibility for the enactment of special measures, i.e. preferential treatment, by the Executive with the aim of achieving equality for social weaker groups. The manner in which such special measures are perceived determines their effectiveness. Women are often most in need of a substantive or transformative approach on equality to ensure their further development and eradicate the discrimination they endure. Thankfully, the complexity of the multiple or intersectional discrimination from which women suffer has been identified and conceptualised internationally. This has strengthened the struggle for gender equality, particularly in plural societies.

At country level equality and non-discrimination is guaranteed in Article 3 Constitution Curaçao. Through its non-exhaustive system of grounds of differentiation, protection is offered against any ground that constitutes unjustified unequal treatment from a single-ground approach. The provision does not contain a norm on the introduction of preferential treatment as a means to eradicate the discrimination which vulnerable groups, like women, encounter. The introduction of preferential measures for the support of local women has not been made possible through a domestic Act either. Nor is there a general Equal Treatment Act where additional protection against violations in private relationships is provided. I strongly argue, following the example of the Netherlands, for the introduction of a low-threshold system with effective protection mechanisms against discrimination. The most recent adaptation of the Civil Code introducing a provision on the prohibition of unequal treatment in the labour sector, particularly in regard to the specific roles of female employees, can be seen as a first step in the right direction. Yet, it is not sufficient considering the severe ill-treatment which women suffer in this society.

The domestic legal system is complemented with equality norms enshrined in those human rights conventions to which the Kingdom is party. However, the protection provided by these norms varies. Accessory equality and non-discrimination norms, such as Article 14 ECHR Articles 2 and 3 ICCPR and Article E ESC, provide protection against unequal treatment and discrimination in correlation with alleged violations of the fundamental rights incorporated in the convention concerned. Autonomous equality and non-discrimination norms, like Article 26 ICCPR and Article 1 Protocol No. 12 of the ECHR, provide a more effective protection, as even the presumption of differentiation or discrimination falls within their scope. The judiciary reviews claims of unequal treatment on these instruments without any restriction. The distinction in equality norms is not only relevant for the kind of protection that is offered to individuals but also for the obligations they create for States. What many of these provisions have in common is their non-exhaustive system of distinction grounds.

As a matter of fact, much of the legal protection for the local inhabitants against unequal treatment and discrimination comes from international law, particularly Article 26 ICCPR. In the former Netherlands Antilles most cases of unequal treatment or discrimination of women based on sex and marital status in the 1980s and the 1990s were reviewed in accordance with this Article. I illustrated this with examples such as the *Shaw v Sint Eustatius* and the *Mathilda c.s. v Roman Catholic Central School Board (RKCS) & EG Curaçao* cases. The contribution of Article 14 ECHR is also undeniable, despite its initial weaker protection system and the fact that it is an accessory non-discrimination provision. As its scope has been expanded through the case-law of the European Court of Human Rights and with the enactment of Article 1 Protocol No. 12 of the ECHR its protection system has been strengthened. Furthermore, the European Court of Human Rights now holds a more substantive equality approach to its application.

The local judiciary is responsible for coherent standards of scrutiny of claims of unequal treatment in accordance with the views of international courts, particularly those of the European Court of Human Rights. The Executive and the legislature also have a prominent role here through the adoption and enforcement of (legal) measures and mechanisms directed at the elimination of discrimination and unequal treatment. In cases of gender-based discrimination they should also follow the objectives of the Women's Convention. True liberation and emancipation for both men and women should be the ultimate goal of the domestic State-agencies, and not merely the assimilation of the position of men by women. Accordingly, a development from a formal approach towards a substantive or transformative approach on equality for the advancement of local women is highly recommended.

It became clear throughout my examination of the equality norms from a gender-perspective under the Women's Convention that their scope and meaning have been clarified by the Committee on the Elimination of Discrimination Against Women in several General Recommendations. For instance, the definition of gender-based discrimination stated in Article 1 Women's Convention presents a non-exhaustive system of discrimination grounds, which makes the creation of any unreasonable ground of distinction a ground that comes under its regime. Accordingly, gender-based violence against women falls under this regime following General Recommendation no. 19. Even the European Court of Human Rights has accepted in the *Opuz v Turkey* case the definition provided by the Committee, as it considers the type of violence raised in this case to be gender-based discrimination under Article 14 ECHR and Article 1 Women's Convention.

Through Article 2 Women's Convention the positive State-obligation to introduce legal and policy measures to eliminate discrimination against women is ensured. Thus, it would benefit the Curaçaoan State-Government to adopt a more dynamic and progressive attitude following the obligations set out in this provision and General Recommendation no. 28 and to introduce gender-sensitive legislation and policy in accordance with the guidelines provided by the Committee.

As Article 3 Women's Convention forms the basis for the introduction of a human rights-based approach to the development of women and gender mainstreaming, it encompasses the State obligation to take all necessary (positive) actions to ensure the advancement of women. The obligation to enforce temporary special measures to accelerate *de facto* equality among men and women under Article 4 Women's Convention, is partly connected with this obligation. As a matter of fact, the enactment of temporary special measures is not a violation of the equality principle. The local Executive could introduce gender-sensitive temporary special measures and allocate funds directed to the advancement of women following General Recommendation no. 25, without this being in conflict with the equality norm enshrined in the Constitution Curaçao and international human rights law.

In sum, as local women suffer multiple forms of discrimination based on their race, ethnicity, class, sexual orientation, disability and age, the protection system that ought to be present requires a multiple-consciousness approach starting with transformative equality, as mandated by the Women's Convention. The domestic legal system currently embraces the single-ground approach and lacks a framework covering multiple and intersectional discrimination. The judiciary does not have a progressive approach on the matter either. So, I think that only with the introduction of legal measures on multiple discrimination and the implementation of transformative equality, can real gender equality be achieved. This means that the application solely of the single ground approach will have to be abandoned. The legislature and the judiciary have a prominent role here, as mandated in the General Recommendations of the treaty-based bodies. With a progressive approach relief can be achieved from the multiple and intersectional discrimination which local women suffer on an almost daily basis without them being aware of it.

Chapter 8

THE STATE'S ACCOUNTABILITY ASPECT FOR THE REALISATION OF WOMEN'S RIGHTS IN THE LOCAL CONTEXT AND THE (NON)PARTICIPATION OF NGOS THEREIN

§ 8.1 Introduction

The advancement and empowerment of women at country level requires the creation and enforcement of gender-sensitive legal measures and policies by State-Governments. The Women's Convention is an international instrument that not only can be applied as a legal instrument in this regard, but it also demands effectuation of policies from a gender-perspective. Through General Recommendations¹ its treaty-based body gives guidelines to States on the legal and policy measures that should be implemented domestically. The concluding comments on the periodic State-reports give concrete directions on ways to ensure the advancement of women.

In the case of the Kingdom, in 1993 the Committee had already made suggestions on the matter of the advancement of women. Moreover, even then, it expected specific information on the national machinery of the former Netherlands Antilles. It even petitioned the Kingdom to provide assistance to the Caribbean territories.² Most interesting was its call in 2010 to the then federal Executive of the former Netherlands Antilles³ on the occasion of the constitutional reforms, to upgrade its national machinery for the advancement of women and to develop its own comprehensive gender mainstreaming policy.⁴

All this requires an examination of the State's accountability for the realisation of women's rights domestically, by establishing both the status of the national machinery and the effectuation of the national gender policy. In the case of Curaçao the following questions emerge:

Has the State-Government, as the actor from above, created its national machinery in the meanwhile and has it developed a cohesive gender policy?

Are there sufficient (financial) means allocated by the Executive for the realisation of this policy?

What were/are the role and the contribution of local NGOs, as actors from below, with regard to the development and execution of the national gender policy from a human rights perspective?

1 CEDAW GR no. 5 (1988) and CEDAW GR no. 25 (2004).

2 For an elaboration on these suggestions, see § 11.7.

3 In this regard the Committee probably meant the Executives of the new countries, Curaçao and Sint Maarten.

4 CEDAW/C/NLD/CO/5, para. 19.

To answer these questions, I address in § 8.2 the importance of gender policy and gender mainstreaming in general. § 8.3 contains remarks on the national machinery of the former Netherlands Antilles and of its successor Curaçao. In § 8.4 the effectuation of the Antillean (old) gender policy is examined. The financing of the social (gender) policy through development aid programmes from the Netherlands is explored in § 8.5. The status of the present national gender policy is investigated in § 8.6. The contribution of NGOs is discussed in § 8.7. My concluding remarks are to be found in § 8.8.

§ 8.2 Gender policy and gender mainstreaming

State-governments became aware that, for the accomplishment of gender equality, the sole introduction of equal treatment legislation and temporary special (legal) measures, as gender policy, did not have the desired effect. Many States now have a tendency to incorporate the gender perspective in mainstream policy. The objective of this process is to ensure that gender policy does not vanish into a more general policy, which starts from traditional ideas and perceptions about gender roles. The concept of gender mainstreaming had already been defined in 1997 by the Economic and Social Council as:

The process of assessing the implications for women and men of any planned action, including legislation, policies and programs, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programs in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.⁵

In its resolution of 2000⁶ the Security Council also recognised the importance of gender mainstreaming in peacekeeping operations. It called upon all actors involved to adopt a gender perspective in their peacekeeping activities. Furthermore, Member States and the United Nations were urged to incorporate a gender perspective in their operations, to increase the representation of women in political decision-making processes and mechanisms at national, regional and international levels, and to protect the rights of women and girls, particularly in the prevention and resolving of armed conflicts.⁷ The Secretary General was finally requested to inform the Security Council on the progress made 'on gender mainstreaming throughout peacekeeping missions and all other aspects relating to women and girls'.⁸ In its turn, the Economic and Social Council has been reaffirming its commitment to gender mainstreaming which is expressed in subsequent resolutions.⁹ It has requested the UN Agencies concerned, such as UN-Women, to continue supporting States in their efforts in gender mainstreaming.¹⁰ Its requests for the incorporation of a gender perspective in all policies and programmes in the United Nations system were also very important.

5 GA A/52/3/Rev. 1, chap. IV, para. 4.

6 S/RES/1325 (2000).

7 Ibid., paras. 1, 4, 5, 8 & 9.

8 Ibid., para. 17.

9 See e.g. ECOSOC 2008/34; ECOSOC Resolution 2009/12; ECOSOC Resolution 2010/29; ECOSOC Resolution 2011/6.

10 See ECOSOC Resolution 2010/29, para. 4; ECOSOC Resolution 2011/6, paras. 4, 5 (f).

Related to the national machinery for the accomplishment of the development, introduction and implementation of a policy directed towards gender, the Beijing Platform for Action stipulated that:

A national machinery for the advancement of women is the central policy coordinating unit inside the Government. Its main task is to support government-wide mainstreaming of a gender-equality perspective in all policy areas.¹¹

States have encountered many challenges with their national machinery as the catalyst for gender mainstreaming.¹² These challenges have been connected to, inter alia, the marginalisation of the national machinery within the governmental system, a chronic lack of (financial) resources, the frequent restructuring of the governmental set-up, inadequate human resources and the lack of knowledge and commitment among governmental actors and politicians. The fact remains, though, that States are accountable for gender mainstreaming and for the advancement of women. The strategy of gender mainstreaming and gender analysis is not only important for ensuring the human rights of women and men, but also relevant for the achievement of objectives in all sectors within a community.¹³

In Article 3 Women's Convention a foundation is provided for the adoption of a gender mainstreaming approach at national level. The rights of women should be ensured by the introduction of positive measures taken to guarantee the proper advancement of women under Article 4 Women's Convention.¹⁴ The policy of Curaçao is supposedly geared towards gender mainstreaming. To verify whether this presumption is accurate I will look into (some aspects of) the national machinery and the national policy in the following paragraphs.

§ 8.3 The governmental machinery

The guidelines on the content of periodic reports submitted by State-members to the Committee prescribe, in Article D2.4, that the reports should include information on the national or official machinery which exercises responsibility for the development, coordination, support and monitoring of the implementation of the obligations set out in the Convention. This suggests that State-parties ought to have in place, and provide information on, a national infrastructure which has an influence on the development of a cohesive gender-based policy, an infrastructure that advises and provides support on the fulfilment of this policy. In the case of Curaçao I investigate, through the documents in which the new governmental structure is recorded, whether attention was paid to the creation of a national machinery on gender. Prior to this, short clarifying observations on the old (Antillean) machinery need to be made; this will help to put things into perspective.

11 A/Conf.177/20/Rev.1, para. 201.

12 Consider e.g. UN Division for the Advancement of Women (DAW) and Economic Commission for Latin America and the Caribbean (ECLAC), *National Machineryes for Gender Equality*, Expert Group meeting, Santiago Chile, 31 August-4 September 1998, EGM/NM/ 1998/Rep.1; Office of the Special Adviser on Gender Issues and Advancement of Women, 'UN Gender Mainstreaming: An overview', New York 2002, available on www.un.org/womenwatch/osagi/pdf/e65237.pdf.

13 Office of the Special Adviser on Gender Issues and Advancement of Women, 'UN Gender Mainstreaming: An overview', New York 2002, available on www.un.org/womenwatch/osagi/pdf/e65237.pdf.

14 Chinkin 2012 (a), pp. 108-114.

§ 8.3.1 *The national machinery of the former Netherlands Antilles from 2002 until 2010*

In the Antillean governmental structure¹⁵ the Minister of General Affairs and External Relations (Prime Minister)¹⁶ was ultimately responsible for the administration and the execution of national policy. Governmental and semi-governmental bodies and NGOs were all jointly responsible for the effectuation of the obligations set out in the Women's Convention and for the realisation of a gender, i.e. emancipation, policy. Despite countless efforts I was not able to retrieve relevant documentation on the status of this policy. In my view it was simply not developed.¹⁷ Only short descriptive information on the national machinery was made available.¹⁸

The government department responsible for monitoring and promoting the implementation of the Women's Convention on behalf of the administration since 2002, and for the effectuation of a gender policy, was the Directorate of Social Development, which came under the Ministry of Public Health and Social Development.¹⁹ The Ministry of Education was also partly involved in the development and implementation of gender-related policies and measures through its Directorate of Education, Sport and Culture.²⁰ In regard to the issue of gross physical (gender-based) violations of women, the Minister of Justice was the authority in charge.²¹ This Minister did not begin from the rights and protection system set out in the Convention, but from the general laws on abuse under the Criminal Code. The Ministers collaborated on gender issues with each other only when necessary. No official inter-ministerial agreements, records or policy documents on gender and women's issues were encountered or made available to me to prove whether this collaboration was diligently effectuated.

§ 8.3.2 *Part of the national machinery until 2010 at island level*

The federal infrastructure on gender, more particularly at the local level, revealed a fragmented set-up, with the local Bureau of Women's Affairs as the main governmental agency. It entered into contracts on behalf of the local Executive with NGOs, like the Women's Development Centre (SEDA), Steering Committee Curaçao and the '*Stichting Maatschappelijke Zorg en Herstel*',²² for services directed at the empowerment of vulnerable social groups, including

15 Article 37 Constitution Netherlands Antilles (old) in conjunction with Art. 1 National Ordinance '*Organisatie Landsverheid*' (P.B. 2001, no. 75).

16 Article 3 National Ordinance '*Organisatie Landsverheid*'.

17 In many areas the local Executive did not develop or have a policy. In those cases where it did, they were not (effectively) implemented. See e.g. the local policy-plan on culture of 2001. Rosalia 2001; the first local policy on social wellbeing is of 2010. Faber 2010.

18 This was confirmed by the former Director and collaborator of the Directorate of Social Development, Mr K Carlo and Mrs V Daflaar, on 13 September 2013; the documents were obtained from Mrs Y Bakhuis, on 14 September 2012.

19 Article 1 in conjunction with Art. 6 para. f National Ordinance '*Organisatie Landsverheid*'.

20 Article 8 National Ordinance '*Organisatie Landsverheid*'.

21 Article 7 National Ordinance '*Organisatie Landsverheid*'.

22 The projects of (1) foster care, (2) guidance for teenage parents and (3) guidance on independent living of young women, executed by the local Bureau of Women's Affairs, were transformed into permanent activities subsidised by the local Executive in 2008. The '*Stichting Maatschappelijk Zorg en Herstel*' established in that same year took charge of their execution. See e.g. Policy document on the Budget 2009 of the island territory

women and children.²³ These contracts were based on the guidelines stipulated in the subsidy ordinance of 2007²⁴ of the island territory of Curaçao.

The local Executive decided at a certain point, however, to transform the local Bureau of Women's Affairs into a Bureau for Family, Gender and Emancipation in the period 2007-2011, a process which commenced in 2008.²⁵ The reasoning behind the transformation of the Bureau²⁶ lay in the realisation that the empowerment and emancipation of women was better served through a family-based approach. At that time, the tasks of the then new Bureau were to support the development of social policies, to provide coordination and guidance for the actors involved in the empowerment of vulnerable groups within society. It was to facilitate support to social weaker groupings, such as young men, teenage mothers, families.²⁷

As the relevant documentation to verify the working, structure and authority of the local Bureau of Women's Affairs was, for whatever reason, not made accessible, I was not able to analyse and verify the effectiveness of the national machinery and gender policy at local level up until 2010.

§ 8.3.3 *The national machinery of the self-governing country Curaçao*

Since October 2010, Curaçao has found itself in a setting up²⁸ phase.²⁹ The basis for its governmental structure was set out in the document on the new administrative and governmental organisation of Curaçao of 2009.³⁰ This document formed the preliminary framework for the new governmental structure, which was afterwards recorded in the national ordinance on the Administrative and Governmental Organisation³¹ of Curaçao.³²

of Curaçao, p. 96; Policy document on the Budget 2010 of the island territory of Curaçao, pp. 91-92; for an extensive elaboration on the activities of this organisation, see § 8.7 below.

23 The ground for these activities of the local Bureau of Women's Affairs is set out in Art. 4 Subsidy Scheme of 2007; Policy document on the Budget 2009 of the island territory of Curaçao, pp. 98-99; for more details see § 4.5.3-§ 4.6.

24 A.B. 2007, no. 104.

25 Policy document on the Budget 2009 of the island territory of Curaçao, p. 95.

26 I was not able to retrieve the report concerned, despite many requests on my part to the people and departments involved.

27 Policy document on the Budget 2009 of the island territory of Curaçao, pp. 95-97.

28 This means effectively that a substantial portion of Antillean law remained effective in Curaçao after 2010, based on add. Art. I Constitution of Curaçao in conjunction with the National ordinance General transitional arrangements' legislation and administration country Curaçao (Annex to A.B. 2010, no. 87).

29 It was stated in local governmental documents that Curaçao will obtain its full autonomous status within the Kingdom by 2025. See e.g. '*Pais Korsou: Kadernota-Centrale visie-Kernwaarden-Definitie van burgerschap-ontwikkelingsgebieden (Visie en Strategieën)*'; (no date); '*De Toekomst van ons Land Curaçao: Wie willen we zijn? Hoe worden we dat? Waar gaan we naar toe? Hoe komen we daar? Wat willen we bereiken? Hoe doen we dat?*' (Visiedocument Land Curaçao: een uitgave van het Bestuurscollege van het Eilandgebied Curaçao), Oktober 2009 (eindversie).

30 The basis of this document was formulated in the 'Fundamentennota Land Curaçao, "*Design to Change*" (eindversie)', 22 February 2008; Nota *Uitwerking van de nieuwe ambtelijke en bestuurlijke organisatie van het Land Curaçao* (Eindnota NBO Land Curaçao), 12 March 2009.

31 A.B. 2010, no. 87.

32 Article 2 National Ordinance '*Ambtelijk Bestuurlijke Organisatie*'; Nota *Uitwerking van de nieuwe ambtelijke en bestuurlijke organisatie van het Land Curaçao* (Eindnota NBO Land Curaçao), 12 March 2009, pp. 27-33.

The Minister of General Affairs (Prime Minister),³³ who ensures and coordinates the general policy of the administration, is in charge of, inter alia, foreign policy and foreign relations³⁴ and overall care for legislation,³⁵ while the development and implementation of the gender policy comes under the competence of the Minister of Social Affairs, Labour and Welfare. The Ministry of Social Affairs, Labour and Welfare has to effectuate a social development policy directed at social cohesion, the stimulation of employment, social security, social justice and poverty reduction.³⁶ The sector for Family and Youth of this Ministry is responsible for an integral development of the gender policy. The Ministry needs to have, for the effectuation of its policies, approaches and strategies directed at cooperation between its own sectors and between the Ministries. Thus, in the new structure, the development and effectuation of gender policy takes place at one level of administration.³⁷

§ 8.3.3.1 The structure and tasks of the Ministry of Social Affairs, Labour and Welfare

The internal structure of each Ministry was designed in the Business plans of 2010. These plans involving the tasks and responsibilities, organisation, personnel and finances of the Ministries were to be implemented in the period 2011 to 2014. The initial Business plan of the Ministry of Social Affairs, Labour and Welfare suggested a structure consisting of two sectors.³⁸ With its adaptation³⁹ in 2011,⁴⁰ the administration starts off from an organisation consisting of three sectors, as statutorily stipulated.⁴¹ The main objectives of the two Business plans are very similar to each other.

The sector for Family and Youth presents policy intentions and strategies directed to the family unit,⁴² young people⁴³ and, to a lesser extent, gender and women. Under gender

33 There are a total of nine Ministries. The Secretary General is the highest civil servant in charge of the administrative apparatus within a Ministry. For an overview of the new structure, see Annexes 1 and 2.

34 The foreign policy and relations of Curaçao, particularly in regard to international human rights law, is determined and defined by the Kingdom (i.e. the Netherlands). It follows what is stipulated by the Netherlands. In the document concerned the involvement and role of the Caribbean countries is nil. It is the position and view of the Netherlands (European part of the Kingdom) is taken into consideration and delineated. See *'Respect and Justice for all'*, Ministry of Foreign Affairs, The Hague, August 2013.

35 Article 4 National Ordinance *'Ambtelijk Bestuurlijke Organisatie'*; Nota *Uitwerking van de nieuwe ambtelijke en bestuurlijke organisatie van het Land Curaçao* (Eindnota NBO Land Curaçao), 12 March 2009, pp. 23, 34-39.

36 Article 10 National Ordinance *'Ambtelijk Bestuurlijke Organisatie'*; see also *'Strategisch Beleid- en uitvoeringsplan Sector Familie en Jeugd, Ministerie van Sociale Ontwikkeling, Arbeid en Welzijn (concept)'*, August 2010;

37 Nota *Uitwerking van de nieuwe ambtelijke en bestuurlijke organisatie van het Land Curaçao* (Eindnota NBO Land Curaçao), 12 March 2009, pp. 78-80; *'Strategisch Beleid- en uitvoeringsplan Sector Familie en Jeugd, Ministerie van Sociale Ontwikkeling, Arbeid en Welzijn (concept)'*, August 2010, p. 3.

38 The sectors of Social Development and Family and Youth were to be merged into one sector under the supervision of one sector director due to the commonality of purpose among these sectors. The other sector was the one on Labour. *Businessplan Ministerie van Sociale ontwikkeling & Welzijn 2010-2014*, Willemstad, 3 May 2010, pp. 42-47.

39 The adaptation was already mentioned in the *'Programa di Gobernashon 2010-2014, Pa un Kòrsou, soberano, solidario i sostenibel'* (no date), p. 132.

40 *Businessplan Ministerie van Sociale ontwikkeling, Arbeid & Welzijn*, 2 November 2011 (revised version).

41 See Annex 3.

42 Several (future) measures related to the institution family are mentioned, such as the amelioration of information and accessibility of centres for families, research on families and vulnerable social groups, and the amelioration and expansion of day care facilities.

43 The measures in regard to the protection and instruction of young people are numerous. Different programmes and projects related to the development of youngsters have been established, such as the research on the

lies the further development of a policy with the objective to eradicate all forms⁴⁴ of gender-based inequality. The targets to achieve this goal were not directed at women, but at young people.⁴⁵ The State-report obligation under the Women's Convention was the only concrete indication towards women and gender. The amelioration of databases, together with the issue of domestic (gender-based) violence, was incorporated as policy strategies as well. The Executive did recognise the necessity to create a policy on the combating of violence and mistreatment of young people and other vulnerable groups, but not specifically of women.⁴⁶

The development of policy on the issue of domestic (gender-based) violence required an inter-ministerial approach where at least four Ministries would need to be involved. For the accomplishment of the objectives related to gender policy, the Business plan affirmed that the Ministry had to perform analyses to obtain information on factors which influence the development of such a policy. The necessity of the establishment of cooperation between Ministries was nonetheless acknowledged.⁴⁷

So far as finance was concerned, no specific item was incorporated in the budget of the Ministry for 2011, 2012 and 2013 on gender.⁴⁸ Considering the possible repercussions of that for the realisation of a gender policy and the enactment of (temporary) special measures directed at the advancement of women, the respective annual budgets of 2011-2013 are examined in § 8.6.4.

With the establishment of the new Family and Youth centres, in charge of carrying out the stipulated policies, the Executive intended to address issues related to family and young people more effectively. The dissemination of information in neighbourhoods by Family and Youth centres through websites and flyers was one of the ways in which awareness on gender issues would be raised in society. It is noted that subsidiary relations with other organisations, such as NGOs, which are jointly responsible for the execution of gender policy, would be established. The governmental agencies in charge of carrying out the policies and strategies, and which also assist the public, are the regional offices known as 'Kasnan di Bario' and the

so-called 'youth culture', the proper implementation of the Children's Convention and Compulsory Youth Training.

44 For its structure see Annex 4.

45 These targets were (1) the improvement of the underachievement of boys in the educational system and the reduction of the number of dropouts, (2) the improvement of the selection policy in the public and private sector and (3) an integral emancipation policy, through the improvement of social independency of boys and girls.

46 *Businessplan Ministerie van Sociale ontwikkeling, Arbeid & Welzijn*, 2 November 2011 (revised version), pp. 9-11, 37-45; see also '*Strategisch Beleid- en uitvoeringsplan Sector Familie en Jeugd, Ministerie van Sociale Ontwikkeling, Arbeid en Welzijn (concept)*', August 2010, p. 5.

47 The Ministry of Education, Science and Sport, the Ministry of Public Health and the Ministry of Justice are the main stakeholders (partners) of the Ministry of Social Affairs, Labour and Welfare in the accomplishment of an integral and effective gender policy. The Business plan mentions a broad network and cooperation between the different actors. However, no inter-ministerial agreement formalising this cooperation has been developed yet. This information is acquired from a collaborator of the Minister of Social Affairs, Labour and Welfare, Mrs Y Bakhuis, on 14 September 2012; *Businessplan Ministerie van Sociale ontwikkeling, Arbeid & Welzijn*, 2 November 2011 (revised version), pp. 43, 47.

48 The issue of gender is not mentioned as a specific area in the budget of the Ministry. The total budget of the Ministry was stipulated at Naf. 356.59 million for 2011. For 2012 the Ministry disposed of Naf. 355.34 million. It had the largest budget of all the Ministries. For overviews see Budget Curaçao 2011 (P.B. 2010, no. 6) and Budget 2012 (P.B. 2012, no. 3).

centres for Family and Youth.⁴⁹ The supervision of their work and of the tasks performed by NGOs would be in the hands of an inspectorate.⁵⁰

In sum, the new governmental structure constitutes drastic changes for the agencies in charge of the development and execution of policy areas, like gender and family. The former local agencies active in the areas of women and young people such as the Bureau of Women's Affairs and the Service of Culture and Education, and federal agencies, such as the Service on the development of Youth (DJJO), which was under the former Directorate of Education, Sport and Culture, were dispensed with and everything came under the umbrella of the sector for Family and Youth.⁵¹ By 2009 the transformation of the local Bureau of Women's Affairs into a Bureau for Family, Gender and Emancipation did not take place.⁵²

§ 8.3.4 Contribution of the legislature

Enforcement of gender-sensitive legislation is extremely important for the respect and fulfilment of the obligations under the Women's Convention. Unlike the Netherlands where, through an emancipation and human rights 'proofing' mechanism, each initiative of law has to be reviewed beforehand to rule out the incorporation of any discriminatory provisions in the law, Curaçao does not have a formal review mechanism where domestic laws are scrutinised on their equality- and gender-sensitiveness prior to their enactment. Hence, through the scrutiny performed of a selection of norms under the family law of Curaçao in Chapter 10, the level of the contribution of the legislature in the enactment of gender-sensitive legislation becomes much clearer.

Another mechanism to strengthen the capacity of citizens and to rule out and eliminate gender-based discrimination could have been the enactment of an equal treatment law following the example of the Netherlands. Although the Executive intended to initiate the process on the introduction of such legislation,⁵³ as of May 2014 there were no signs of steps undertaken by the legislature towards its enactment.⁵⁴

With the introduction of its own permanent Committee to monitor and evaluate the progress of gender mainstreaming and review periodically governmental policy on its gender-sensitiveness, the Parliament has another mechanism to ensure gender-sensitive measures. This mechanism has not been realised yet. The Parliament can persuade the Executive to incorporate a gender-perspective into national policy by using its budgetary right following Article 85 Constitution. In those cases where the legislature neglects, for whatever reason, its obligations to protect and fulfil the rights of women, the judiciary provides relief by performing a test for reasonableness of the introduced (legal) measures on the provisions of the Women's Convention. The legislature remains the highest authority accountable for the realisation of the obligations set out in the Women's Convention.⁵⁵

49 *Businessplan Ministerie van Sociale ontwikkeling, Arbeid & Welzijn*, 2 November 2011 (revised version), p. 52; 'Strategisch Beleid- en uitvoeringsplan Sector Familie en Jeugd, Ministerie van Sociale Ontwikkeling, Arbeid en Welzijn (concept)', August 2010, pp. 9-11.

50 *Ibid.*, pp. 55-58.

51 For an overview, see *Ibid.*, pp. 51-52.

52 Policy document on the Budget 2009 of the Island territory of Curaçao, pp. 95-99.

53 *Businessplan Ministerie van Sociale ontwikkeling, Arbeid & Welzijn*, 2 November 2011 (revised version), p. 11.

54 For more information on this subject see § 7.6.3.

55 De Boer 2003, p. 17.

§ 8.3.5 Contribution of the judiciary

The role of the judiciary in the realisation of women's rights is very crucial, although it is greatly disputed in the Dutch legal system and thus also in the domestic legal system of Curaçao. Like I pointed out in Chapter 6, the protection of individuals at local level is accomplished through the review of domestic law on provisions enshrined in human rights convention that are binding on all persons. In addition, protection can also be provided by international monitoring bodies (Court or Commission), but only after the national remedies, which have to be available and admissible, are exhausted.⁵⁶

The discussion on the direct applicability of the provisions of the Women's Convention is inextricably linked with the authority of the judiciary to review domestic law on the provisions set out in that particular Convention. The point of departure in the Curaçaoan legal system, following the Dutch legal system, is that the provisions set out in the Women's Convention are binding if their contents and formulation are foreseeable. During the treatment of (the approval of) this particular convention, the House of Representatives of the (Kingdom of the) Netherlands admitted that several (substantive) provisions of the Convention might be directly applicable in the Dutch legal order.⁵⁷ With the ratification of the Optional Protocol to the Women's Convention the Kingdom recognised, under certain circumstances, the (substantive) inalienable rights and freedoms of women in the Convention. Yet, there is still no explicit recognition of these rights in the Dutch legal system.⁵⁸ This position was questioned by the treaty-based Committee to this Convention in 2010.⁵⁹

The inadequate knowledge about the substantive provisions of the Convention among the judiciary and other legal experts influences the proper implementation of the Convention within the legal systems of the Kingdom. Nonetheless, the Executive of (the Kingdom of) the Netherlands maintained its approach to this issue as, according to it, the direct applicability of the substantive provisions is determined by the courts, and not by the Executive or the Parliament. Affirmation of this came with the *SGP* cases and in a case of 2011.⁶⁰ In the *SGP* cases the direct applicability of a provision of the Women's Convention⁶¹ in the Dutch legal system was recognised by the courts.⁶² The institutionalised discrimination against women, based on gender-stereotypes, by the political party *SGP*, which entailed firstly the exclusion of women as ordinary members of the party⁶³ and then as elected members of representative

56 See for an elaboration on the matter Boerefijn 2009, pp. 577-599.

57 For elaborations on the meaning and scope of the provisions under the Women's Convention, see Heringa, Hes & Lijnzaad (red.) 1994; Freeman, Chinkin & Rudolf (eds.) 2012.

58 De Boer 2003, pp. 17-18; Holtmaat 2002, p. 141.

59 See also § 11.7.

60 HR 1 April 2011, ECLI:NL:HR:2011:PB3044 (*Stichting proefprocessenfonds Clara Wichman c.s. v De Staat der Nederlanden (Ministerie van Sociale Zaken en Werkgelegenheid)*).

61 In this case it concerned the direct applicability of Art. 7 paras. a and c Women's Convention.

62 See e.g. Afdeling Bestuursrechtspraak Raad van State of 5 December 2007, ECLI:NL:RvS:2007:BB9493 (*SGP v de Minister van Binnenlandse zaken en Koninkrijksrelaties*), para. 2.11; Gerechtshof 's-Gravenhage of 20 December 2007, ECLI:NL:GHSGR:2007:BC0619 (*De Staat der Nederlanden (Ministerie van Binnenlandse zaken en Koninkrijksrelatie & Vereniging SGP vs. Stichting Proefprocessenfonds Clara Wichmann c.s.)*), para. 4.7; HR 9 April 2010, ECLI:NL:HR:BK4549 (*De Staat der Nederlanden (Ministerie van Binnenlandse zaken en Koninkrijksrelaties) en de Vereniging SGP v Stichting Proefprocessenfonds Clara Wichmann c.s.*), para. 4.4.2.

63 After the initial court case in 2005 they amended their statutes, permitting women to become members of the party. See Rechtbank 's-Gravenhage of 7 September 2005, ECLI:NL:RBSGR:2005:AU2088 (*Stichting Proefprocessenfonds Clara Wichman c.s. v De Staat der Nederlanden (Ministerie van Binnenlandse zaken,*

bodies, persisted as the Executive and Parliament failed to introduce measures in conformity with the Women's Convention to remedy the situation.

The Supreme Court of Justice, after weighing the conflicting human rights, decided finally in 2010 that the positioning of the SGP was unacceptable as it touched on the right to vote of people in a democratic system. The approach of the party did not constitute a justifiable reason for a religiously-based distinction between men and women.⁶⁴ The Court underlined the failure of the State to take measures against the discrimination against women perpetuated by the political party. Yet, it regarded that only the State was competent to address this situation and not the judiciary.⁶⁵ Although the SGP attempted afterwards to have the case reviewed by the European Court of Human Rights, its complaint was considered to be inadmissible by this Court.⁶⁶ This Court stated clearly, however, that it:

(...) reiterates that the advancement of the equality of the sexes is today a major goal in the Member States of the Council of Europe. This means that very weighty reasons would have to be advanced before a difference of treatment on the ground of sex could be regarded as compatible with the Convention. (...)

Moreover, the Court has held that nowadays the advancement of the equality of the sexes in the Member States of the Council of Europe prevents the State from lending its support to views of the man's role as primordial and the woman's as secondary.⁶⁷

In the case of 2011 the Supreme Court of Justice dismissed the direct applicability of another provision⁶⁸ laid down in the Women's Convention.⁶⁹ The issue regarded the alleged infringement of women's equal rights by the withdrawal of a legal measure ensuring the entitlement of self-employed women to benefits during pregnancy and childbirth. Amendment to the Act concerned in 2004 led to this situation. A further amendment to correct it in 2008 nevertheless left a group of these women without the necessary financial security.⁷⁰ The Supreme Court, following the view of the Court of Appeal in the matter, argued that neither from the text nor the wording of the Women's Convention could it be deduced that the State-parties intended for the norm concerned to have direct applicability. Thus, for its direct applicability the content of the provision is definitive. The Supreme Court of Justice considered finally, after contemplating the provision's content, that under the Women's Convention the provision lacked precision in its formulation, so it was deemed unfit for direct applicability by the judiciary.⁷¹

The rights of women are protected anyway as, in any case, the submission of a communication to the Committee exists, even in cases where the Supreme Court of Justice

para. 3.35. For background information on this issue and an analysis of the cases prior to the decision of the Supreme Court in 2010, see Flinterman & Shuteriqi 2002, pp. 336-343; Boerefijn 2010, pp. 121-139.

64 HR 9 April 2010, ECLI:NL:HR:BK4549 (*De Staat der Nederlanden (Ministerie van Binnenlandse zaken en Koninkrijksrelaties) en de Vereniging SGP v Stichting Proefprocessenfonds Clara Wichmann c.s.*), para. 4.5.5.

65 *Ibid.*, para. 4.6.2.

66 Judgment of 10 July 2012, Appl. no. 58369/10 (*SGP v the Netherlands*).

67 *Ibid.*, paras. 72 and 73.

68 It concerned Article 11 para. 2 sub b Women's Convention.

69 HR 1 April 2011, ECLI:NL:HR:2011:PB3044 (*Stichting proefprocessenfonds Clara Wichman c.s. v De Staat der Nederlanden (Ministerie van Sociale Zaken en Werkgelegenheid)*).

70 *Ibid.*, para. 3.1.

71 *Ibid.*, para. 3.3.3.

decides that the provision(s) is (are) not applicable in the Dutch (read: the Kingdom's) legal system.⁷² Subsequently, this approach also applies in the Curaçaoan legal system

The applicability of the (substantive) provisions of the Women's Convention can also be accomplished in another way. The judiciary can interpret or incorporate the provisions of the Convention within the open legal norms and concepts⁷³ that are common in the domestic legal system or in procedures against the Executive or third parties, as is argued for the Netherlands.⁷⁴ An example of the use of provisions of a convention and the views of its Committee in local cases by the judiciary is the *Fundashon Kresh Montagne* case of 2012.⁷⁵ Although it does not regard the application of the Women's Convention as such, the case provides insights on the way in which international standards and norms enshrined in, inter alia, the Convention on the Rights of the Child, particularly the Concluding Observations on the Kingdom's periodic reports,⁷⁶ can be utilised to give protection to alleged victims against abuses and ill-treatments. Actually, the Court of Appeal considered in this case that the corporal punishment which a child suffered at the hand of a carer at a daycare centre, provided justifiable reason for the immediate dismissal of the employee concerned based on the centre's policy on this issue, which was known by the employee.⁷⁷ It is a policy that found, according to the Court, its foundation in the national policy of the local Executive and educational institutes.⁷⁸ In the Court's view the measure complied with the objective of preventing physical abuse and was therefore not disproportionate.⁷⁹

In the Dutch legal system, the direct applicability of a provision like Article 5 Women's Convention is generally not accepted by the judiciary and legal experts. This line of reasoning is also valid in Curaçao. The reasons lie primarily in the fact that the provision contains instructions for the Executive to introduce policies and (legal) measures to eradicate typical gender-stereotypes within society which negatively influence the advancement of women. Consequently, the judiciary, setting out from a conservative approach, will probably declare it to be inapplicable.⁸⁰ Holtmaat argues nonetheless that, due to the dynamic nature of the Women's Convention, a claim on the violation of Article 5 through stereotypical policy and (legal) measures enacted by the legislature, conducive to damage to the rights of an identifiable group of women, can be sustained.⁸¹ The applicability of the areas addressed in the substantive provisions, such as Article 16 Women's Convention, is more justifiable and accepted by the judiciary, of course when not starting from the formal approach of equality, but rather by taking the particular position of women into consideration.⁸²

Lastly, a practical impediment in the contribution of the judiciary in the protection at local level that I have to mention is related to the fact that the majority of the judges is of Dutch origin and employed on a temporary basis. This situation jeopardises the degree of

72 CEDAW/C/NLD/Q/5/Add.1, para. 4.

73 I.e., concepts such as reasonableness and fairness, discrimination and good governance.

74 In regards to the Women's Convention, specifically see De Boer 2003, p. 18.

75 GHvJ 8 May 2012, LJN:BW8379 (*Fundashon Kresh Montagne*).

76 In this case CRC/C/NLD/CO/3 (2009), paras. 36-37 were incorporated. *Ibid.*, para. 3.7.

77 *Ibid.*, para. 3.11.

78 *Ibid.*, para. 3.6.

79 *Ibid.*, para. 3.9.

80 Lijnzaad 1994, pp. 54-56.

81 Holtmaat 2002, pp. 129-146.

82 Forder 1994, pp. 239-253.

protection that is offered, considering that most of them are deficient in 'Papiamentu' and many are not that familiar with the socio-cultural realities and necessities of the population.⁸³

§ 8.3.6 A National Human Rights Institution for Curaçao

Since 2012 the Executive has had the intention to set up a national human rights institution for the protection and fulfilment of (women's)⁸⁴ human rights.⁸⁵ It went so far as to officially communicate these intents to the Human Rights Council, as it was aware that:

(...) the situation on the ground was not fully in conformity with the treaties. The National Human Rights Institution must work towards that and was not only expected to promote and protect human rights, but also to play an important role in human rights education.⁸⁶

Thus, this independent institution will have as its objective the promotion and strengthening of the effectuation and supervision capacity of the local human rights regime. The Directorate of Foreign Relations (DBB) is responsible for the coordination of the activities on the setting up of a working group in charge of the elaboration of the details for the establishment of this institution.⁸⁷ Several governmental agencies, NGOs and experts, such as the Ministry of Justice and the Ombudsperson,⁸⁸ were approached to give their contributions. The initial actions directed at the realisation of this project included the design or set-up of the institution.⁸⁹ Although the realisation of the project for the strengthening of the protection system and promotion of women's rights has not been accomplished as of May 2014, some careful steps have been undertaken through interactions with stakeholders. It is, however, not entirely clear which form and powers this future institution will have nor how long it will take to set it up.

§ 8.3.7 The Ombudsperson

Other bodies and institutions, such as the Ombudsperson, may in the meanwhile have a role in the realisation of women's rights at local level. They can supervise and evaluate the

83 Lewin 2008, p. 198; De Haan 2013, p. 155.

84 The importance and contribution of a national human rights institution for the promotion and implementation of the Women's Convention has been recognised and stressed by the Committee in its Statement of 2008. See E/CN.6/2008/CPR.1 (Annex II).

85 This institution will have as its objectives the promotion, protection and fulfilment of human rights in Curaçao as stipulated in the 'Paris Principles' (GA A/RES/48/134). There are, however, many unclear issues related to the covering of international human rights law, the financial consequences and the independence of the institution, as the objective was considered to be very broad for a small island. See Letter of the Acting Director of the Directorate of Foreign Relations, L. de Bode, to the Prime Minister of Curaçao (G. Schotte), ref. DBB-237/2011, 23 February 2012; Memorandum Ministerie van Justitie, 9 March 2012, ref.: *Oprichting Mensenrechteninstituut 2012/011029*; Memorandum Ministerie van Justitie, 27 March 2012, ref.: *Institutionaliseren Mensenrechten instituut*.

86 A.HRC/21/15 (2012), para. 79.

87 Decision Council of Ministers of 28 March 2012, no. 2012/011029.

88 The Ombudsperson was to act as the coordinator of this. See Letter of the Acting Director of the Directorate of Foreign Relations, L. de Bode, to the Prime Minister of Curaçao (G. Schotte), ref. DBB-237/2011, 23 February 2012.

89 *Concept-plan van aanpak Oprichting Mensenrechten Instituut Curaçao* (no date); draft National Decree instalment Commission establishment Human Rights Institution of Curaçao (no date).

implementation of women's rights, domestic (gender-sensitive) laws and measures of the Executive and governmental agencies. In the Curaçaoan context, the Ombudsperson is a constitutional body⁹⁰ which monitors the actions of the Executive towards the inhabitants.⁹¹ The national ordinance on the Ombudsperson regulates its powers and authority.⁹² This institution has the power to investigate misconduct by the Executive, issue public reports on its findings and make recommendations and reports annually to the Parliament.⁹³ Simply put, it has powers to complement the protection of individuals in cases⁹⁴ where judicial intervention is undesirable or unavailable, while strengthening the supervision mechanisms of the Parliament on the Executive.⁹⁵ It relies on the law and on the concepts of fairness and justice for its monitoring competence.

Although the Ombudsperson might have been confronted with cases of human rights violations when scrutinising individual claims during its more than 10 years of existence, the law on the Ombudsperson does not provide it with explicit authority to investigate all types of violations of human rights⁹⁶ effectively.⁹⁷ The domestic legal system does not have a human rights commission either to address the complaints of human rights issues in both the public and private spheres. So, in cases of infringements of women's rights by the administration, the Ombudsperson can only argue for the (in)direct usage of international human rights law, supporting the reasons in the findings of an investigation. It can also function as an indirect domestic mechanism to foster and strengthen the enforcement of these laws.⁹⁸

All in all, at present the Ombudsperson does not serve as an effective national mechanism for the implementation, monitoring and promotion of the State-Government's obligation to comply with human rights law as enshrined in, inter alia, the Women's Convention. Nonetheless, since 2012 it has been involved in the field of human rights law. For example, in September 2013 it organised the third Curaçao International Ombudsman Conference on the role of the ombudsman in the protection of the human and social rights of children,

90 Prior to 2010, the Ombudsperson was a local institution of the island territory of Curaçao, which had monitored since 2003 the misconduct of local governmental agencies, based on the Island Ordinance of 7 June 2001 (A.B. 2001, no. 69). For an elaboration on the activities and the accomplishment of this institution since the official initiation of its monitoring activities in 2003, see Martijn 2013, available on: www.ombudsman-curaçao.an.

91 Article 71 Constitution of Curaçao.

92 A.B. 2010, no. 87.

93 Article 12 in conjunction with Arts. 27 and 28 National Ordinance Ombudsman.

94 Overall, an increase in complaints has been registered. For the total of cases handled in 2010, see *Jaarverslag van de Ombudsman Curaçao* 2010, December 2011, pp. 18-26; for the cases in 2011, see *Jaarverslag van de Ombudsman Curaçao* 2011, November 2012, pp. 14-22.

95 The Explanatory Memorandum of the National Ordinance Ombudsman, pp. 14-17.

96 The human right that it has been involved and preoccupied with is the guaranteeing of the right to water for (poor) people in Curaçao in conformity with the CESCR General Comments no. 15 (E/C.12/2002/11). It has been confronted with severe cases of no access to water by some inhabitants. I did not, however, receive any documentation on a cohesive policy addressing this problem by this institution. Information obtained from Mr K Concincion, on 25 September 2013.

97 Apart from this limitation, the Office of the Ombudsperson has to cope with a lack of staff to perform its monitoring task effectively. The lack of communication with and cooperation from the Executive also adversely affects the quantity and quality of its work. Information obtained from Mr K Concincion, on 25 September 2013; see also *Jaarverslag Ombudsman Curaçao* 2011, November 2012, p. 6.

98 For an elaboration on the contribution of the Ombudsperson in the promotion of human rights law, see Reif 1999, pp. 271-315.

and the Ombudsperson collaborates with human rights institutes of other countries, such as Mexico.⁹⁹

§ 8.4 The gender policy of the former Netherlands Antilles

In my view the former Netherlands Antilles did not have a comprehensive national gender or emancipation policy.¹⁰⁰ The policy as developed by the Department of Welfare, Family and Humanitarian Affairs and the Directorate of Social Development was mainly directed at legal reforms and ad hoc programmes and projects.¹⁰¹

It was only in 2003-2004 that the setting-up of gender policy networks between the former Netherlands Antilles and the island territories became part of the alleged national gender policy. This led to the establishment of a network consisting of government agencies and local NGOs for the effectuation of gender-related policies and measures.¹⁰² In the document 'A vision of Gender Mainstreaming of the Netherlands Antilles' brief information is given about suggestions on the importance of the development of a cohesive gender policy during the transformation which the former Netherlands Antilles was going through between 2005 and 2010. Topics like women in poverty, violence against women, women's full political and economic participation and women's sexual and reproductive health and rights were identified. No in-depth analysis on a comprehensive gender policy was presented. Four issues for the accomplishment of real equality for women were underlined.¹⁰³ In sum, the national gender policy looked at general gender policy suggestions, suggestions on the issue of domestic (gender-based) violence and on the issue of sexual and reproductive rights of women. However, despite several requests on my part, no in-depth documentation was provided or made available on the status of the realisation of programmes and measures on these policy areas. Even worse, the information in the previously mentioned document was so brief¹⁰⁴ that I cannot, under any circumstances, speak of a cohesive national gender policy.

There were some areas in which measures were put in place that contributed to the improvement of the position of (young) women directly.¹⁰⁵ These developmental, sensitive strategies and (legal) measures came from the hands of the Directorate of Social Affairs and the Directorate of Education, Sport and Culture. An example is the enactment of the national ordinance on the Compulsory Youth Training in 2006.¹⁰⁶ Several other

99 For information on this conference, visit www.ombudsman-curaçao.an.

100 This assessment has been confirmed by all the people who were interviewed on this topic, including the former head of the Department of Social Development and high-ranking collaborators of the former Minister of Social Affairs, Labour and Welfare.

101 For more details, see Chapter 5.

102 'Gender policy Nederlandse Antillen', in: 'Beleidsterrein gender: Grondslagen beleidsgebied, gender policy Nederlandse Antillen (concept), portefeuille 2008', (no date), (annex).

103 The issues were: (1) the upgrading of the national and local machinery for the formulation of evidence-based gender policy; (2) the upgrading of policy and statistical governmental agencies to perform gender-based analysis; (3) the situational analysis of men and women, and based on this policy programmes had to be developed; and (4) the development and implementation of gender-responsive budgeting. 'A vision of Gender Mainstreaming for the Netherlands Antilles', in: 'Beleidsterrein gender: Grondslagen beleidsgebied, gender policy Nederlandse Antillen (concept), portefeuille 2008', (no date), (annex).

104 The document on gender mainstreaming in the former Netherlands Antilles consisted of only three pages.

105 'Aan de slag met sterke vrouwen in het Koninkrijk: onderzoek naar beleid en praktijk', De Universiteit van de Nederlandse Antillen/ Ministerie Binnenlandse Zaken en Koninkrijksrelatie (part 2)), Curaçao, March 2010.

106 P.B. 2005, no. 72; for an extensive elaboration on this programme, see § 9.7.2.

general programmes developed by the federal Executive in collaboration with, and with financial support from, the Netherlands had indirect effects on (young) women. Some were directed at the improvement and strengthening of federal and local governmental structures, while others were projects directed at the social development of the population. The financial support from the Netherlands found its legal ground in Article 36 Charter. The organisations primarily in charge of the allocations of these funds were, inter alia, the ‘*Uitvoeringsorganisatie Stichting Ontwikkeling Nederlandse Antillen*’ (hereafter: USONA), ‘*Stichting Antilliaanse Mede Financierings Organisatie*’ (hereafter: AMFO) and to a lesser extent ‘*Reda Sosial*’.¹⁰⁷

Despite financial support from the Netherlands, neither the former Netherlands Antilles nor the respective island territories were able or capable to develop a cohesive gender policy and machinery. To substantiate this claim, a reference can be made to the findings of the investigation on the situation of young (teenage) single mothers of Antillean (and Aruban) origin in the Kingdom. Several factors related to policy-culture adversely influencing the proper development of a national gender policy were exposed. The inadequate capacity for and expertise on gender issues among public servants, the lack of structural financial resources and marginalisation of the machinery were identified as impediments.¹⁰⁸ Many suggestions were made for the improvement of the Antillean policy for the advancement of women, particularly in regard to the position of single mothers.¹⁰⁹

107 Since 2004 the ‘*Stichting Ontwikkeling Nederlandse Antillen*’ (SONA) has been in charge of the procedures on cooperation and development aid programmes between the Netherlands and the Netherlands Antilles. The management of the funds lay with the ‘*Uitvoeringsorganisatie Stichting Ontwikkeling Nederlandse Antillen*’ (USONA). The USONA was responsible for the allocation and the supervision of the allocated financial means for governmental programmes. The Education, and Youth partnership programmes (OJSP), of which the Compulsory Youth Training formed a part, was one of these programmes. The Social Economic Initiative of Curaçao of 2008 and the Plan Security Netherlands Antilles were other examples. For more information visit www.usona.cw; see also Derksen & Kooren 2008, pp. 14-15; the financial support to programmes directed at poverty reduction, education and formation, and care and welfare of NGOs in the Netherlands Antilles came from the ‘*Stichting Antilliaanse Mede Financierings Organisatie*’ (AMFO). See Arts. 3 and 4 Byelaws of ‘*Antilliaanse Mede Financierings Organisatie*’ (AMFO), 20 December 2006 (revised); the foundation ‘*Reda Sosial*’ received funding from the Netherlands, the former Netherlands Antilles and the island-territory for poverty reduction at neighbourhood level. ‘*Reda Sosial*’ literally means ‘social safety net’. This fund was established in 1996, after the measures proposed in the report ‘*Aan de slag*’ of 1996, to tackle the socio-economic challenges which the former Netherlands Antilles was confronting at that time. For more background details visit www.redasocial.com. Currently, it executes programmes on integral neighbourhood improvements, family-oriented assistance, youth, elderly care and female-headed families. See report ‘*Armoedebestijding met focus op alleenstaand moeders met kinderen, Reda Sosial*’, received on 26 May 2014 (unpublished); There were other organisations which received funding from the Executive of the Netherlands for the development of projects, such as the ‘*Stichting Ontwikkelingsfonds Netherlands Antilles*’ (SOFNA), which since 2010 has been the ‘*Stichting Ontwikkelingsfonds*’.

108 The factors included the limited size of the island territories where a rather close connection between administration, policy and execution was noted. The parties involved started off from their life-long experiences and not so much from a research- and science-based approach to gender issues. Besides the limited personnel capacity, the finances for the execution of areas of the policy were merely based on an institutional ground and not so much on project structures and sustainable programmes. The researchers came to the conclusion that the transformation of this approach into a more dynamic and modern way of working was quite difficult. ‘*Aan de slag met sterke vrouwen in het Koninkrijk: onderzoek naar beleid en praktijk*’, De Universiteit van de Nederlandse Antillen/Ministerie Binnenlandse Zaken en Koninkrijksrelatie (part 2), Curaçao, March 2010, pp. 27-29.

109 *Ibid.*, pp. 63-65, 71-79.

§ 8.4.1 *The gender policy of the island territory of Curaçao*

As the local governmental agency in charge of the fulfilment of gender policy at local level, the local Bureau of Women's Affairs was not able to develop a structural, long-term, emancipation policy. Its strategies and projects often had a short-term basis as many of the projects were financed on an annual basis and this affected their effectiveness and realisation. In the last budget of the island territory Curaçao, the Executive presented a policy on social development¹¹⁰ which included a framework for the objectives of the Bureau. Attention was paid to social areas, such as family and gender,¹¹¹ where three key objectives¹¹² for the realisation of the visions on these areas were stated. The priorities within the gender and family policy were to be executed by the new Bureau of Family, Gender and Emancipation.¹¹³ The change in direction on the area of gender towards the multiple problems of single mothers connected to their education and participation in the labour market apparently demanded the transformation of the Bureau. The Bureau was to effectuate its future strategies from a family-based approach in which more attention was given to the role of men within the family and to the unequal treatment (disadvantages) experienced by women in the labour sector.¹¹⁴

Thus, by 2010 the areas of attention of the Bureau of Women's Affairs were founded on the community-based and family-based approach for the development of policies on gender and emancipation. The emphasis in the work of the new Bureau was placed on providing support to families, social assistance, the emancipation of vulnerable groups in society, welfare services, poverty reduction. The policy on the emancipation of vulnerable social groups would include information, communication and assistance methods to support their self-reliance.¹¹⁵ Finally, the Executive, with the involvement of the Bureau of Women's Affairs, did draw up in 2010 a framework document on a general welfare policy for the then future country Curaçao. In this document points of departure for seven areas of welfare were delineated with the objective of creating a framework for the social well-being of all inhabitants, particularly vulnerable social groups in society, including (young) women.¹¹⁶

§ 8.4.2 *Contributions of NGOs to the gender policy of island territory Curaçao*

My examination of the development and implementation of measures on the advancement of women and men requires the inclusion of the contribution of local NGOs to the gender policy at local level. This policy was created between and accomplished by governmental agencies and NGOs. Furthermore, the gender policy, if I can call it a policy, often followed the

110 Its official title is the sector of Public Health and Social Development.

111 Policy document on the Budget 2010 of the Island territory of Curaçao; Policy document on the Budget 2009 of the Island territory of Curaçao.

112 These objectives were: (1) the development of an integral policy directed at fortification of the family, with emphasis on gender and the emancipation of men and women; (2) social security and a right to a subsistence level; and (3) integral prevention.

113 Policy document on the Budget 2010 of the Island territory of Curaçao, pp. 82-84.

114 *'Aan de slag met sterke vrouwen in het Koninkrijk: onderzoek naar beleid en praktijk'*, De Universiteit van de Nederlandse Antillen/Ministerie Binnenlandse Zaken en Koninkrijksrelatie (part 2), Curaçao, March 2010, pp. 15-16.

115 Policy document on the Budget 2010 of the Island territory of Curaçao, pp. 84-91.

116 A Project group appointed by the local Executive was instituted to formulate a national welfare policy, and the local Bureau of Women's Affairs formed part of it. See Faber 2010.

initiatives and projects developed and executed by NGOs. They were closely involved with the determination of areas of gender or, even worse, they acted as trendsetters responsible for the development of policy strategies and programmes. Considering the seriousness of this situation for the realisation of a gender policy, further remarks on the contribution of NGOs are to be found in § 8.7.¹¹⁷

In regard to finances, I ought to note that many projects of NGOs directed at the improvement of the social situation of the population were jointly financed by the island Administration, AMFO and USONA.¹¹⁸ The local Executive¹¹⁹ designated the financial means to the NGOs based on the subsidy ordinance of 2007,¹²⁰ while AMFO and USONA administered the Dutch funds.¹²¹ Actually, all this reveals a rather complex (finance) structure in which the different governmental agencies and NGOs operated.

§ 8.5 Financing of the social (gender) policy in anticipation of the autonomous status of Curaçao

Considering the complexity of the financing structure, more insight on the contribution of 'external' institutions for the realisation of projects in the area of social development became imperative. Whatever people may say, the lack or availability of financial resources influences State accountability in the realisation of a (gender) policy. So, I provide clarifying remarks below on the financial and social structure applied in Curaçao since 2008.¹²² The programmes and projects were financed by the local administration, AMFO and indirectly USONA, with the funds made available through, inter alia, the Education and Youth partnership programmes (OJSP)¹²³ and the Social-Economic Initiative (SEI),¹²⁴ and, after October 2010, by the Executive of Curaçao. The foundation '*Reda Sosial*' has coordinated since 2013, after the closure of AMFO,¹²⁵ the funding of projects of some NGOs for Curaçao.

§ 8.5.1 *The Social-Economic Initiative of Curaçao*

In anticipation of the new governmental structure, and as a plan directed at the improvement of the socio-economic situation of the inhabitants, the Social-Economic Initiative convened

117 See the overview of programmes and projects financed by the Government of Curaçao through the local Bureau of Women's Affairs incorporated in the Policy document on the Budget 2010 of the Island territory of Curaçao, p. 91.

118 There were also other funds like '*Samenwerkende fondsen*', '*Stichting Prins Bernard Cultuurfonds*', '*Reda Sosial*' and many others. Yet, the main fund for the NGOs since 2003 was AMFO. See Elias e.a. 2009.

119 The local Executive incorporated the projects financed by USONA in its budget and programming. See Policy document on the Budget 2010 of the Island territory of Curaçao, pp. 91-92.

120 Article 3 Subsidy ordinance of Curaçao (A.B. 2007, no. 104).

121 Article 1 in conjunction with Art. 5 Bye-laws of '*Antilliaanse Mede Financierings Organisatie*' (AMFO), 20 December 2006 (revised).

122 This is officially the year when the Social-Economic Initiative (SEI) started. This programme finds its origin in the '*Hoofdlijnen akkoord tussen de Nederlandse Antillen, Nederland, Curaçao, Sint Maarten, Bonaire Sint Eustatius and Saba*', Bonaire, 22 October 2005 and the '*Slotverklaring van het Bestuurlijk overleg over de toekomstige staatkundige positie van Curaçao en Sint Maarten*', Den Haag, 2 November 2006. For the objectives of the programme, see § 8.5.1.

123 '*Programma Onderwijs en Jongeren, Samenwerkingsprogramma Nederland – Curaçao 2008-2012*', Curaçao, December 2007.

124 '*Sociaal Economisch Initiatief Curaçao: bouwen aan een zekere toekomst*', version 26 March 2008.

125 For more details on AMFO and its closure, see § 8.5.3-§ 8.5.4.

between the Netherlands and Curaçao¹²⁶ was introduced in 2008. A total of 118 projects¹²⁷ were to be accomplished in the period from 2008 to 2010. The funds¹²⁸ for the accomplishment of these temporary projects were provided by the Netherlands. Thus, besides the usual programmes financed by USONA and AMFO, another instrument was introduced with the objective of creating and effectuating an adequate starting point for country Curaçao in the areas of (1) economy, (2) labour participation, (3) social development, (4) governmental restructuring¹²⁹ and (5) restructuring of social security.¹³⁰

The projects under the area of labour participation included the improvement of the connection between vocational education and the labour market and higher education, and vocational and ICT training for single mothers, which were projects geared towards the advancement of a specific group of women.¹³¹ The area of social development covered projects in the fields of poverty reduction, youth policy and health care. Under the field of poverty reduction lies the improvement of the effectiveness of the work performed by NGOs. Through the issue of poverty and the strengthening of NGOs¹³² the societal situation of women was indirectly addressed. However, only NGOs operating in specifically identified social fields were eligible for financial support. Effectively, the issue of gender-based violence was the only field in which women were explicitly regarded.¹³³ The then intended projects were general measures to strengthen existing policies and (legal) measures, particularly in the field of poverty reduction. With the exception of a couple of projects directed at the protection of independent living by young women (and men), and at training for single mothers, no other projects directed at the advancement of women were incorporated in this initial programme.¹³⁴ Most projects started from a general approach on the advancement of the socio-economic situation of the population.

§ 8.5.2 *Evaluation of the Social-Economic Initiative of Curaçao*

In 2011 the Social-Economic Initiative programme underwent an evaluation.¹³⁵ The report concerned showed that the programme suffered a delayed start, which resulted in the adaptation of the deadline for the allocation of the available funds, the projects and the

126 'Samenwerkingsprotocol ten aanzien van het Sociaaleconomisch Initiatief (SEI) Curaçao', 23 May 2008.

127 The available budget for the realisation of these projects was Naf. 123.6 million. However, the total required amount was Naf. 267 million. For an overview of the costs related to the projects, see 'Sociaal Economisch Initiatief Curaçao: bouwen aan een zekere toekomst', version 26 March 2008, p. 13 and Annex I (Overview of projects), p. 85.

128 A significant part of the financial means came from the Netherlands. 50% of the funds (Naf. 60.5 million) supported the original finances for the implementation of the Social-Economic Initiative, as a result of the incorporation of Curaçao in the restructuring process by 2007. Article 3 'Samenwerkingsprotocol ten aanzien van het Sociaaleconomisch Initiatief (SEI) Curaçao', 23 May 2008.

129 The projects and programs in this area were separately convened in the 'Samenwerkingsconvenant Institutioneel Versterking en Bestuurskracht 2008-2012', Eilandgebied Curaçao en Nederland, March 2008.

130 'Sociaal Economisch Initiatief Curaçao: bouwen aan een zekere toekomst', version 26 March 2008, pp. 6-12, 15-16, Annex I (Overview of projects); 'Oog voor duurzaamheid: Eindrapport quickscan SEI-Curaçao' (PWC), 16 June 2011, p. 5; visit www.usona.cw.

131 'Sociaal Economisch Initiatief Curaçao: bouwen aan een zekere toekomst', version 26 March 2008, pp. 46-55.

132 The project regarding the strengthening and support to NGOs obtained Naf. 1.33 million.

133 'Sociaal Economisch Initiatief Curaçao: bouwen aan een zekere toekomst', version 26 March 2008, pp. 56-57.

134 The total amount available for this project was Naf. 600,000. The Bureau of Women's Affairs was in charge of its execution.

135 'Oog voor duurzaamheid: Eindrapport quickscan SEI-Curaçao' (PWC), 16 June 2011.

division of responsibilities between the policy sectors (Ministries). As a result, the period for the initiation of projects was extended to September 2011. The allocation of the funds finished in March 2012 and the execution of the last projects was to end in 2013.¹³⁶ Several projects were extended though.¹³⁷ The findings showed, among other things, concerns about the realisation of the projects in due time, the achievement of the objectives and the sustainability of the projects. Shortcomings were observed in: the priorities; the little attention paid to the effectiveness of the projects; the (in)appropriateness of the time-frame; and the responsibilities of the bodies in charge of the execution and monitoring of the projects. The main issue remained the sustainability of the projects though. If some projects were not transformed into permanent programmes incorporated in the general policy framework of the Executive with the allocation of the necessary financial means, their effectiveness would eventually evaporate.¹³⁸ Rightly, recommendations were made to guarantee a successful implementation of the Social-Economic Initiative programme.¹³⁹

In anticipation of the finalisation of the development aid programmes from the Netherlands, the setting of new (financial) priorities and a delay in the execution of the projects took place.¹⁴⁰ The question that arises here is, whether the Executive is able to secure and continue these projects, particularly those (in)directly related to the advancement of women, in a cohesive, sustainable and financially feasible policy, considering all the above.

§ 8.5.3 *The contribution of AMFO*

The AMFO was, since its establishment in 2002,¹⁴¹ one of the main contributors to the social development of the island territories in the field of poverty reduction. This situation did not alter for Curaçao after 2010.¹⁴² The Executive of the Netherlands, the benefactor, gave directions on the goals and directions of the financing policy of AMFO. In its last directions of 2009, for instance, stipulations¹⁴³ were included on the allocation of the funds for two main target groups, young people and women, particularly concerning the position of (single) mothers in female-headed households.¹⁴⁴ It was actually the first time that the Netherlands had put so much emphasis on an aspect regarding the issue of the advancement of women

136 'Addendum samenwerkingprotocol Sociaaleconomisch Initiatief (SEI) Curaçao en Nederland', 13 January 2011.

137 For instance, the financing and further execution of the last part of the Compulsory Youth Training Programme for which a new agreement came into being in 2012. The programme is supposed to terminate in 2014. As regards the agreement between the Minister of Education and USONA, for the period of 2012-2013, USONA had the total amount of Naf. 9.685 million to administer. Jaarverslag (U)SONA of 2012, 26 April 2013, p. 20.

138 'Oog voor duurzaamheid: Eindrapport quickscan SEI-Curaçao' (PWC), 16 June 2011, pp. 35-39; see also Parliamentary report II 2011/2012, 31 568, no. 90, p. 1.

139 Ibid.

140 Jaarverslag (U)SONA of 2012, 26 April 2013; Parliamentary report II 2011/2012, 31 568, no. 90, p. 2.

141 AMFO jaarprogramma en begroting 2012, Curaçao & Sint Maarten, October 2011, p. 4.

142 The financing of projects on the smaller islands Bonaire, Saba and Sint Eustatius was terminated at the end of 2010. Letter of the Ministry of Internal Affairs and Kingdom's relations, to the Executive Board of the public entity Bonaire, ref. RCN/2010/102.875, topic: *AMFO Projecten*, 28 October 2010; Letter of AMFO Director (R. Karsdorp), to the Ministry of Internal Affairs and Kingdom's relations (P.H. Donner), ref. B111173RK, topic: *Afronding AMFO projecten op de BES eilanden*, 1 June 2011.

143 As stipulated in Art. 3 Bye-laws of AMFO (as amended), the benefactor, in this case the Netherlands, prescribes on annual basis in a so-called framework letter the allocation of the available funds.

144 This alteration in the framework for the policy of AMFO was the result of the investigation conducted in 2010 on the position of single mothers of Caribbean countries within the Kingdom of the Netherlands. 'Aan de slag

in the West. Since the restart of AMFO in 2007,¹⁴⁵ most attention went to projects and programmes directed at the development and protection of young people. The main issues for AMFO were (1) upbringing and education and (2) care and welfare. Thus, most projects and programmes were directed at the target group of young people and, to a lesser extent, to elderly and disabled persons.¹⁴⁶ Besides the position of single mothers, the strengthening of NGOs and integrated neighbourhood development also became part of AMFO's policy objectives by 2010. I have to note though that only 5% of its total budget was allocated to projects on the advancement of single parents (mothers). As justification for the imbalanced division within the budget, overlapping between the projects directed at the various target groups was given. The projects directed towards the development of women were literacy campaigns, adult education and family counselling projects. Women also obtained indirect benefits from other general projects, such as children's day care.¹⁴⁷

Related to the objective of the strengthening of the NGO sector, an assessment¹⁴⁸ on the operation of NGOs in Curaçao¹⁴⁹ was carried out in 2009 which showed that the obstacles¹⁵⁰ to the proper functioning of local NGOs varied.¹⁵¹ Possible measures for the removal of these obstacles were proposed, which included the installation of a shared service centre to support the submission of project proposals by NGOs, the introduction of multifunctional neighbourhood centres and the strengthening of the role of AMFO as a coordinator between and for the NGOs. More important was the proposal for the introduction of a long-term financing policy which could have guaranteed the continuation of the projects on the structural problem of poverty and deprivation in society.¹⁵² It became clear that the NGOs were confronting serious (financial and infrastructural) challenges, despite their valuable contribution to vulnerable groups in society.

met sterke vrouwen in het Koninkrijk: onderzoek naar beleid en praktijk, De Universiteit van de Nederlandse Antillen/ Ministerie Binnenlandse Zaken en Koninkrijksrelatie (part 2)), Curaçao, March 2010.

145 The discovery of (financial) mismanagement in 2005/2006 led to the temporary termination of the activities of AMFO. After a short period of restructuring, the new AMFO became operational again in 2007. AMFO jaarprogramma 2007, Bonaire & Sint Maarten, April 2007, p. 4; Plataforma N.G.O. Korsou, Jaarverslag 2004-2006 (eindconcept), (no date), p. 17; Letter of the State-secretary of Internal Affairs and Kingdom's relations (A.Th.B. Bijleveld-Schouten), to the AMFO Director (R. Karsdorp), ref. 2009-0000564507, topic: *Beleidskader 2010 e.v. jaren*, 14 October 2009.

146 Consider for this assessment the framework letter for the period 2007 and 2008. Letter of the State-secretary of Internal Affairs and Kingdom's relations (A.Th.B. Bijleveld-Schouten), to the AMFO Director (S. Betrian), ref. 2007-0000094596, topic: *Richtinggevende kaderbrief over de wijze waarop de middelen beschikbaar worden gesteld*, 14 March 2007; See also *AMFO jaarprogramma 2007*, Bonaire & Sint Maarten, April 2007; *AMFO jaarprogramma 2008*, Curaçao, September 2007; *AMFO jaarrekening 2007*, Curaçao, March 2008; *AMFO jaarverslag en jaarrekening 2008*, Curaçao, April 2009; *AMFO jaarprogramma 2009*, Curaçao, September 2008; *AMFO jaarverslag en jaarrekening 2009*, Curaçao, June 2010.

147 See e.g. *AMFO jaarprogramma 2010*, Curaçao, October 2009, p. 6; *AMFO jaarverslag en jaarrekening 2010*, Curaçao, 20 May 2011; *AMFO jaarprogramma en begroting 2011*, December 2010.

148 Elias e.a. 2009.

149 The same assessment was performed in Sint Maarten in 2010. The outcomes were almost identical with those of Curaçao. See Knigge & Martina 2010.

150 These were (1) the shortage of (structural) financial means, (2) the lack of expertise and manpower, (3) their accommodation, (4) the high demands of AMFO in regard to the submission of project proposals and (5) the shortage in the exchange of know-how amongst the NGOs. For an assessment of the satisfaction amongst NGOs on the procedures and processes at AMFO, see Simmons 2010.

151 Elias e.a. 2009, pp. 7-9.

152 *Ibid.*, pp. 10-12.

§ 8.5.4 *Effects of the closure of AMFO*

Already prior to the dissolution of the Netherlands Antilles, it was decided that Curaçao¹⁵³ would no longer receive funds for (social) projects of NGOs from December 2012. According to the Netherlands, the new self-governing countries had to carry the full responsibility for the welfare and well-being of their citizens¹⁵⁴ from then on. Thus, as of January 2013 AMFO no longer disbursed the financial means¹⁵⁵ for the financing of projects on social development. The local Executive got two years to prepare itself for this financial burden and to make the required reservations in its budget for ensuring the continuation of the projects.¹⁵⁶ The announced termination of funding by the Netherlands, and the eventual closure of AMFO, obviously led to concerns¹⁵⁷ as to the future operation of many (projects of) NGOs and their employers.¹⁵⁸ The Executive was, however, not capable of providing the necessary funds in due time.¹⁵⁹ By the end of 2013 practically all of the activities of NGOs financed by AMFO were terminated.

Based on its yearly performance, the outcome of the above-mentioned research, its role as a major employer, the success of many projects and the outcomes of sessions with NGOs in 2011, AMFO came to the conclusion that it had to continue its contribution to the social sector of Curaçao even after 2012. Otherwise, with its closure, many achievements would prove to have been in vain.¹⁶⁰ Furthermore, the outcomes of sessions between AMFO and the NGOs showed that only 10% of NGOs were certain of financial aid from the Executive after 2012. The majority were confronted with an extremely uncertain future.¹⁶¹

The financing policy implemented by AMFO was directed at projects and programmes on a temporary basis. This was the major shortcoming of its objectives, which were directed at poverty reduction through primarily education. Moreover, the financial means came from an external country, namely the Netherlands. These two factors harmed the creation of a structural and sustainable social policy and development at national level. With the closure

153 The same situation applies to Sint Maarten.

154 For an assessment of the state of well-being of the people of Curaçao, see Faber 2010.

155 The amount of Naf. 11.637 million was effectively spent in 2010, and in 2011 the amount of Naf. 8.792 million was spent on projects in Curaçao. For 2012 the amount of Naf. 8.806 million was allocated. For more information on the allocation of the funds in the territory, see *AMFO jaarverslag en jaarrekening 2010*, Curaçao, 20 May 2011; *AMFO jaarverslag en jaarrekening 2011*, Curaçao, May 2012; *AMFO jaarprogramma en begroting 2012*, Curaçao & Sint Maarten, October 2011.

156 See for this decision the letter of the State-secretary of Internal Affairs and Kingdom's relations (A.Th.B. Bijleveld-Schouten), to the AMFO Director (R. Karsdorp), ref. 2009-0000564507, topic: *Beleidskader 2010 e.v. jaren*, 14 October 2009.

157 The main concerns were outlined by the Director of AMFO, Mr R Karsdorp. In several letters he requested the Government of the Netherlands to reconsider its decision by implementing the announced termination of the funding in phases (terms). Letter of AMFO Director (R. Karsdorp), to the State-secretary of Internal Affairs and Kingdom's relations, (A. Th. B. Bijleveld-Schouten), no ref., topic: *Kaderbrief*, 4 November 2009; letter of AMFO Director (R. Karsdorp), to the Ministry of Internal Affairs and Kingdom's relations, no ref., topic: *Toekomstscenario's AMFO na 2012*, 19 March 2010.

158 As a result of the closure of AMFO, approximately 375 people lost their jobs. See overview in the daily newspaper '*Amigoe*', 8 November 2013, p. 3.

159 Letter of AMFO Director (R. Karsdorp), to the Ministry of Internal Affairs and Kingdom's relations, no ref., topic: *Toekomstscenario's AMFO na 2012*, 19 March 2010.

160 *AMFO jaarprogramma en begroting 2011*, December 2010, pp. 8-9; *AMFO jaarverslag en jaarrekening 2011*, Curaçao, May 2012; *AMFO jaarprogramma en begroting 2012*, Curaçao & Sint Maarten, October 2011.

161 *AMFO jaarverslag en jaarrekening 2011*, Curaçao, May 2012, pp. 10-12; *AMFO jaarprogramma en begroting 2012*, Curaçao & Sint Maarten, October 2011.

of AMFO by 2013 the social sector was confronted with a major challenge, which had to be addressed by the Executive diligently and effectively.

The Executive was, despite timely notifications by AMFO, unable to secure the financial means for the continuation of many social programmes. The continuation of AMFO under the same circumstances would have brought some relief, yet a more structural and sustainable (social and gender) policy, whether implemented by AMFO or not, remained imperative in the long run. The remaining funds were allocated under '*Reda Sosial*',¹⁶² with the approval of the Netherlands.¹⁶³ This organisation, at the request of the Executive, designated funds to youth projects of four NGOs,¹⁶⁴ which would have been terminated before the end of 2013.¹⁶⁵ The Executive intended to secure the execution of several social programmes of NGOs by allocating a substantial amount in its budget of 2014.¹⁶⁶ However, the funds for the programmes offered by NGOs were already desperately needed by the beginning of 2014 as numerous NGOs had become unable to execute their projects.

§ 8.6 The gender policy of country Curaçao

Considering that the framework for the general policy is stipulated in the coalition agreements, government programmes¹⁶⁷ of the subsequent administrations, and the annual budgets,¹⁶⁸ I examined their contents for indications on the national gender policy. I have to point out beforehand that the lack of continuity in governance affects the finalisation and execution of any plans or projects. Unstable political and governmental situations and the lack of integrity and presence of corruption¹⁶⁹ have influenced adversely the proper realisation of objectives intended to benefit vulnerable groups in this society. Since 2010 Curaçao has had four administrations. The last three came into office within a period of one year.¹⁷⁰

162 The funds were divided between Curaçao and Sint Maarten. The funds designated for Sint Maarten came under the administration of the Sint Maarten Development Fund. Information obtained from a collaborator of AMFO on 17 April 2013.

163 See daily newspaper '*Amigoe*', 30 September 2013, p. 1.

164 The NGOs were: '*Bos di Hubentut*', '*Fundashon Formashon Musikal den Bario*', '*Fundashon Formashon Alegria*' and '*Fundashon Kristal*'.

165 See daily newspaper '*Amigoe*', 20 September 2013, p. 6.

166 The Executive intended to allocate as of 2015 annually a total amount of Naf. 8 million for projects and programs of NGOs. See daily newspaper '*Amigoe*', 30 September 2013, p. 1.

167 See e.g. Programa di Gobernashon 2010 -2014, '*Pa un Korsou Soberano, Solidario i sostenibel*' (no date); Regeerprogramma Curaçao 2013-2016, '*Speransa I Konfiansa (Hoop en vertrouwen)*' (no date).

168 Budget Act of Curaçao 2011 (P.B. 2010, no. 6); Budget Act of Curaçao 2012 (P.B. 2012, no. 3); Budget Act of Curaçao 2013 (P.B. 2013, no. 10).

169 Several recommendations have been put forward in academic contributions and reports on the severe problems related to lack of integrity and corruption. See e.g. Ten Berg 2011; Saleh 2011, pp. 28-30; '*National Integrity System Assessment: Curaçao 2013*', Transparency International (2013); also a report of the International Narcotics Control Strategy of 2013 mentions the degree of corruption among civil servants. See daily newspaper '*Amigoe*', 8 March 2014, p. 1.

170 After the fall of Cabinet Schotte in August 2012, the (interim) Cabinet Betrian came into office. The latter held office from September 2012 until December 2012. Afterwards the interim Cabinet Hodge, consisting of only professionals, came into office at the end of December 2012. Cabinet Hodge resigned in March 2013. The current administration, Cabinet Asjes took office in June 2013.

§ 8.6.1 *Governmental (in)stability and its effects on a (gender) policy*

The challenges related to the execution of a gender policy lie in the priority set down by the Executive, the available financial means and personnel capacity and expertise on gender issues.¹⁷¹ Besides these factors, the continuity of the administration also has to be taken into account. The complex domestic governmental structure and political reality brings with it that the governments (coalition) are often not able and capable of finishing their terms of office successfully. The fall of the first administration in August 2012 due to internal power struggles, a constitutional crisis which followed in October 2012¹⁷² and the resignation of the third administration in March 2013 without finalising all of its specific assignment, confirm this assertion. This has led to the non-accomplishment of the stipulated strategies and projects.

Consequently, the Ministry of Social Affairs, Labour and Welfare was not entirely able to address the implementation of the framework as stipulated in its Business plan and new governmental structure. As of May 2014 there were many uncertainties about the direction and the execution of programmes within this Ministry, due to, inter alia, (internal) conflicts and the approach of the Minister.¹⁷³ The subsequent administrations since October 2010 were engaged in putting into place the new governmental structure and ad hoc measures. So, in my view no cohesive policy or machinery on gender has been developed yet. There are lots of uncertainties and a lack of capacity in the machinery after the closure of the Bureau of Women's Affairs and the merging of the federal and local government services and agencies on gender. With their placement under the sector for Family and Youth, no real direction has been put forward. There seems to be a (chronic) lack of knowledge and commitment among civil servants and politicians about this area. This became evident after I was unable to obtain cooperation and documentation on concrete national plans and policy from the Executive and its agencies.¹⁷⁴ Accordingly, the effectiveness of the implementation of the general policy could not be established by me.

§ 8.6.2 *Policy framework: the coalition agreements*

For the further determination of the status of policies and directions on gender, I looked at the coalition agreements and the more extensive governmental programmes. The effectuation and effectiveness of the national policy in regard to ensuring the implementation of (human rights) conventions depend on the vision and direction of the Executive. The first administration¹⁷⁵ stated in its coalition agreement 2010-2014¹⁷⁶ that its main goals were the improvement of the quality of life and life standards, social cohesion and the establishment

171 As stated by Saleh, the quality and production of the public apparatus on the islands are in urgent need of improvements. Saleh 2011, p. 33.

172 Van Rossem 2012, pp. 2545-2547.

173 See e.g. daily newspaper 'Amigoe', 19 April 2014, pp. 1-2; daily newspaper 'Amigoe', 14 May 2014, p. 2.

174 It appears that the Foundation Governmental Accountant Bureau (*Stichting Overheids Accountantsbureau* (SOAB)) has recently performed an assessment on the functioning of the Ministry of Social Affairs, Labour and Welfare. The preliminary findings show that the Ministry lacked a general policy, including those that come within the scope of the sector of Family and Youth. See daily newspaper 'Amigoe', 2 December 2013, p. 2.

175 The Executive was formed by three political parties 'Movimentu Futuro Kòrsou (MFK)', 'Pueblo Soberano (PS)' and 'Partido MAN'.

176 'Akuerdo di Gobernashon 2010-2014, Pa un Kòrsou Soberano, Solidario i Sostenibel' (no date).

of a democratic, fair and effective Government. Several areas of priority were appointed, such as the introduction of proper education, sustainable development, economic growth, the improvement of public transportation and alternative energy.¹⁷⁷

The main (working) objectives of the Ministry of Social Affairs, Labour and Welfare were the development and conducting of a policy directed at minimising social inequality, where attention was paid to the institution of the family and living standards in the '*barios*',¹⁷⁸ and on the position of weaker groups in society.¹⁷⁹ Women were not explicitly included as a specific target group. Under the sector for Family and Youth came the development of a policy directed at the institution of the family. The only area in which women were explicitly considered was on the issue of domestic (gender-based) violence, as the Executive intended to develop and implement a policy in this area. Under the sector for Labour the then future implementation of the law on maternity leave was mentioned.¹⁸⁰ As the term of this administration was prematurely terminated, many of its objectives were not (effectively) realised.

After the general election of September 2012¹⁸¹ the new coalition¹⁸² formulated its coalition agreement for the period 2012-2016.¹⁸³ An interim administration was assigned for a period of six months which had the task of introducing a package of austerity measures,¹⁸⁴ which affected the most vulnerable groups in society. The then main objectives of the Ministry of Social Affairs, Labour and Welfare were the increase in staff numbers and the strengthening of the execution and monitoring mechanisms to guarantee compliance with labour and social legislation. Effectively, only three specific areas were highlighted, which were the creation of more job opportunities,¹⁸⁵ the performance of more social work in the

177 Ibid, pp. 8-11.

178 '*Barios*' means neighbourhoods.

179 Administration Schotte developed in 2011 a long-term national plan on neighbourhood development directed at the improvement of living standards, social cohesion, good governance in the '*barios*', seeing that a severe deterioration in the quality of life in neighbourhoods had been registered. This plan was put on hold by the next administrations. As of May 2014 no other cohesive plan or policy on this subject has been put forward. '*Plan Nashonal pa desaroyá Bario 2011-2014*', Gobièrnu di Kòrsou (Plan Nashonal pa desaroyó Bario i.o.v. Raad van Ministers), May 2011.

180 '*Akuerdo di Gobernashon 2010-2014, Pa un Kòrsou Soberano, Solidario i Sostenibel*' (no date), pp. 19-20.

181 For the results of the elections for the Parliament of Curaçao in 2012, visit www.cbs.cw.

182 This coalition consisted of the political parties '*Pueblo Soberano (PS)*', '*Partido Adelanto i Inovashon Soshal (PAIS)*', '*Partido Nashonal di Pueblo (PNP)*' and the independent Member of Parliament Mr G Sulvaran. After the assassination of the leader of the biggest party '*Partido Soberano (PS)*' on 5 May 2013, Curaçao has been confronted by many political uncertainties, which aggravates the instability of its political spectrum.

183 '*Akuerdo pa un Gobernashon enfoká riba pas, tranquilidad i prosperidat, periodo 2012-2016*', 12 December 2012.

184 The measures included the introduction of general healthcare insurance (P.B. 2013, no. 3) and the raising of the age limit from 60 to 65 for entitlement to pension benefits under the General Pension and Widows and Orphans ordinances (P.B. 2013, no. 24).

185 An example is provided by the intentions for the enactment of the so-called 80%-20% Act, which was presented by the political party '*Pueblo Soberano (PS)*' in 2011. The main objective of this law was to improve employment opportunities for locals in comparison with migrants, as some locals perceived that their position and participation in the labour sector has been adversely affected and marginalised by the presence of migrants. The draft Act would enact the statutory obligation of companies to employ a minimum 80% of locals and 20% non-local. This proposal was considered by the Advisory Board to be in breach of equality norms prescribed in international human rights law (RvA no. RA/13011-LV). The current Executive intends, through the Ministry of Social Affairs, Labour and Welfare, to get a second opinion on this proposal and its enactment by 2015. See '*National Integrity System Assessment: Curaçao 2013*', Transparency International (2013), p. 22; '*Regeerprogramma Curaçao 2013-2016, 'Speransa i Konfiansa' (Hoop en vertrouwen)*', p. 49; for more details on the perceptions and attitudes of locals towards migrants see De Bruijn & Groot 2014, pp. 128-155.

'barios' and poverty reduction through the ensuring of financial means for the activities of NGOs in the social area, which used to be financed by AMFO.¹⁸⁶ Strategies directed at the advancement of women and the realisation of a cohesive gender policy were absent from these agreements.

§ 8.6.3 *Women and gender issues in government programmes*

The government programme of 2010-2014¹⁸⁷ contained the same objectives and strategic goals as the coalition agreement over the same period. The objectives of the Ministry of Social Affairs, Labour and Welfare coincide with those in the coalition agreement. The main focal points of the Ministry include compliance with the obligations set out in international (human rights) conventions, which entailed the adaptation of domestic laws to these conventions and monitoring of and furthermore the conducting of investigations into, the situation of vulnerable social groups.¹⁸⁸ Women were not mentioned as an identifiable group. The general policy of the sector for Family and Youth did not include the advancement of women and gender issues. The policy started from the development of policies from a youth- and family-based approach.¹⁸⁹ In the specification of the policies, under the sector for Social development, is included the development and implementation of a general policy directed at the reduction of inequality and poverty.¹⁹⁰ Another social policy goal was the development of a framework for policies and policies for the different areas, through seven action plans directed at, inter alia, gender, 'barios' and the elderly. Subsequently, specific attention was paid to these target areas and the restructuring of neighbourhood centres ('*Kasnan di Bario*').¹⁹¹

The sector for Family and Youth included target areas directed at the support of parents, particularly single (teenage) mothers, through educational programmes¹⁹² and on the improvement of the quality of the Compulsory Youth Training programme among other things. Extensive attention was paid to the development of policies and programmes directed at young people. The target areas of the intentions were the performing of investigations directed at the situation of young people and families, for the development of a more accurate policy by 2011. The creation of two Family and Youth centres by 2012, where services and assistance are to be given to families, single (teenage) mothers and youngsters, was planned.¹⁹³

Under the issue of domestic (gender-based) violence was among other things the establishment of a National plan on domestic violence between the Executive and NGOs

186 'Akuerdo pa un Governashon enfoká riba pas, trankilidad i prosperidat', periodo 2012-2016, 12 December 2012, pp. 24-25.

187 'Programa di Governashon 2010-2014, Pa un Korsou Soberano, Solidario i Sostenibel', (no date).

188 The Ministry did compile a report on the status of the compliance with the obligations under the Convention on the Rights of the Child (ICRC) in Curaçao. I did not encounter similar reports on the other conventions. '*Rapport uitvoering Rechten van het Kind Curaçao 2009-2011*', Ministerie van Sociale Ontwikkeling, Arbeid, Welzijn Beleidsorganisatie (no date).

189 'Programa di Governashon 2010-2014, Pa un Korsou Soberano, Solidario i Sostenibel', (no date), pp. 132-133.

190 For this area a total amount of Naf. 148.22 million was reserved.

191 'Programa di Governashon 2010-2014, Pa un Korsou Soberano, Solidario i Sostenibel', p. 134-139.

192 For this area Naf. 12.154 million was allocated.

193 'Programa di Governashon 2010-2014, Pa un Korsou Soberano, Solidario i Sostenibel', p. 145-154.

and the setting-up of a monitoring institution.¹⁹⁴ The remaining target areas of the Ministry included the development of policy on the improvement of living conditions and the welfare of children, elderly and disabled persons. Target areas specifically directed at the advancement and emancipation of women were excluded. The sector for Labour included the implementation of the law on maternity leave by 2011; a law which came into force in 2012.¹⁹⁵ With the exception of the enactment of this law and the issue of domestic (gender-based) violence, no other target areas on women and gender issues were incorporated.

In November 2013 the current Administration presented its (draft) programme containing its objectives and strategies for the period 2013 to 2016.¹⁹⁶ The direction of the general policy is based on five general strategic goals. The main aims for the Ministry of Social Affairs, Labour and Welfare were again numerous. This Ministry had a role in providing accessibility to education and care, accessibility to employment, cooperation with the other Ministries, open communication with the public, poverty reduction, the adaptation of the retiring age and so forth. There were, however, austerity measures announced for this Ministry in the coming years, which meant cuts in the funding of its programmes.¹⁹⁷ Its tasks and objectives are directed to the realisation of general projects and programmes on, inter alia, poverty reduction and neighbourhood development, with much emphasis on employment and the overall participation in the labour market of the population. With the exception of projects that would indirectly affect the position of women, particularly connected to families with multiple problems and to poverty reduction, there was no specific programme directed to the advancement of women.¹⁹⁸ Meanwhile, an adaptation of the subsidy policy was announced for 2014. What this measure implies for the NGO sector is not entirely clear.¹⁹⁹ All in all, I can conclude that the development, implementation and monitoring of a comprehensive gender-mainstreaming policy, as mandated by the Committee,²⁰⁰ received no attention from any administration.

§ 8.6.4 *The financing of a gender policy in the annual budgets 2011 and 2012*

As the realisation of a cohesive gender policy was not a priority for subsequent administrations, it was not surprising that insufficient financial means were allocated for projects on women's development. The delineated framework of the Ministry of Social Affairs, Labour and Welfare in the budget of 2011 had four main objectives.²⁰¹ The issue of the advancement and empowerment of women was not incorporated as a specific objective.

194 For the development of a National Plan on domestic (gender-based) violence, Naf. 10,000 was allocated. Ibid., p. 155.

195 The National Ordinance on the adaptation of the Civil Code (Book 7A) of 3 April 2012 (P.B. 2012, no. 24).

196 'Regeerprogramma Curaçao 2013-2016, "Speransa I Konfiansa" (Hoop en vertrouwen)' (no date).

197 These are: nation building, sustainable economic development, improvement of the quality of life, good governance and responsible budgetary and financial policy. Ibid., pp. 5-17.

198 One of the projects is the establishment of a treatment centre for families which are victims of domestic violence was and which is planned to start in 2015.

199 'Regeerprogramma Curaçao 2013-2016, "Speransa I Konfiansa" (Hoop en vertrouwen)' (no date), pp. 47-51.

200 CEDAW/C/NLD/CO/5, paras. 17 and 19.

201 These are (1) the advancement of social cohesion, (2) the participation in the labour market, (3) the empowerment of the citizens of Curaçao, and (4) the healthy development of the child and the protection of the family as the cornerstone of society.

The first administration set out from an approach directed at the empowerment of society as a whole. It pointed out that, in its general social development policy, special attention would be paid to violence and crime and strategies on the prevention of domestic (gender-based) violence would be formulated. Furthermore, the gender aspect in 2011 was expressed through the announcement of a policy concentrating on the position of poor women and the underachievement of boys. The strengthening of cooperation mechanisms and of the national machinery as demanded from the countries within the Kingdom by the United Nations was recognised. The strategy was directed at the creation of collaboration between the sectors involved in gender mainstreaming and monitoring based on the conclusions of, inter alia, the CEDAW conference of 2010.²⁰² No other mention was made of the development of a national gender policy directed at women though, unlike the position pertaining to young people.²⁰³ For the accomplishment of the objectives on the identified areas, several NGOs received subsidies from the Executive. The Women's Development Centre (SEDA)²⁰⁴ and the 'Stichting Maatschappelijke Zorg en Herstel' were among them.

In the delineated national policy on social development in the budget 2012, it was stated that one of the priorities was the reduction of inequality and social deprivation, with special attention on inequality in incomes. Other priorities relate to the improvement of the livelihood in the 'barrios', the strengthening of institutions addressing the rights of children, the revision of labour laws with special attention on the introduction of the law on maternity leave, and the general empowerment of citizens. Compliance with the reporting obligation set out in the Women's Convention was an aspect that was highly regarded. The participation of Curaçao at international conferences was seen as a way of complying with this obligation. Furthermore, the necessity of scientific research for the establishment of proper strategies was recognised.²⁰⁵

The development of a gender policy was not incorporated as a main priority for 2012 though. Again, extensive attention was paid to the development and implementation of a youth-based policy. The setting up of two Family and Youth centres was included, among other things.²⁰⁶ As a matter of fact, one Centre was opened in 2011.²⁰⁷ The objectives of 2011 were repeated in 2012. The main priorities of the sector for Family and Youth for strengthening the position of social groups were included in the previously mentioned objectives and activities.²⁰⁸ Unlike in 2011, no NGO subsidy overview was incorporated. Several NGOs, like the Women's Development Centre (SEDA), did nonetheless obtain the finance needed for the realisation of their structural family-based projects.²⁰⁹

202 The Explanatory Memorandum of the Budget Act of Curaçao 2011, pp. 121-125.

203 In comparison with NGOs on gender issues, numerous NGOs on youth issues receive structural financial support from the Government. See the Explanatory Memorandum of the Budget Act of Curaçao 2011, pp. 128, 132; see also 'Rapport uitvoering Rechten van het Kind Curaçao 2009-2011', Ministerie van Sociale Ontwikkeling, Arbeid, Welzijn Beleidsorganisatie (no date).

204 The Women's Development Centre (SEDA) received Naf. 350,000 for the execution of its activities. Other women's organisations like Steering Committee Curaçao were not included.

205 The Explanatory Memorandum of the Budget Act of Curaçao 2012, pp. 180-187.

206 Ibid., pp. 191-198.

207 'Rapport uitvoering Rechten van het Kind Curaçao 2009-2011', Ministerie van Sociale Ontwikkeling, Arbeid, Welzijn Beleidsorganisatie (no date), pp. 11-12.

208 The Explanatory Memorandum of the Budget Act of Curaçao 2012, pp. 200-203.

209 The Island Ordinance subsidy scheme of 2007 is applicable as a National Ordinance of Curaçao based on Art. 1 'Landsverordening Algemene Overgangsregeling wetgeving en Bestuur Land Curaçao van 2010' (Annex,

With the enactment of the instruction measure based on the Kingdom's Act on Financial Supervision by the Kingdom in July 2012²¹⁰ for the compliance with norms for a balanced budget, several budgetary cuts and other measures were carried out in 2012 and 2013.²¹¹ This Kingdom's decision led to additional cuts in the expenditure of the governmental and NGO sectors. The Executive had to comply with obligations stipulated by the Kingdom. By March 2014 it had complied satisfactorily with the instruction by the introduction of a balanced budget for 2014. So, the instruction was accordingly lifted.²¹² However, additional austerity measures have been announced in the government sector which means, inter alia, massive lay-offs in this sector and cut backs in the social, health and educational sectors.²¹³

§ 8.6.5 *The financing of a gender policy in the annual budget of 2013*

The budget of 2013 is characterised by the introduction and implementation of further adjustment measures in the social and health sectors and by cuts in public finance, which had adverse effects on the well-being of several social groups, such as the elderly, and the general (social) programmes of the Administration.²¹⁴ As of May 2014 the intended countervailing measures to cope with the adverse (social) effect of the austerity measures had not been introduced.

The priorities of the Ministry of Social Affairs, Labour and Welfare were the carrying out of research on the effectiveness of policy, its monitoring and evaluation. Under specific areas of the sectors for Social Development and Family and Youth, activities on poverty reduction and on the strengthening of institutions actively involved with the protection of children's rights, were enumerated. This includes many programmes and strategies on the protection of young children, on multiple problems within families, the development and improvement in the standard of living in 'barrios' and policy measures for the elderly and for persons with disabilities. As regards women's and gender issues, once again only plans in the field of combating domestic (gender-based) violence were included, such as, inter alia, the implementation of the recommendations for a plan of action on domestic (gender-based) violence of 2012, the evaluation of policy and inter-ministerial cooperation with the Ministry of Justice, Healthcare and Education.²¹⁵

A.B. 2010, no. 87). The Minister is accountable for the financing of projects related to gender issues of NGOs active in this area.

210 The Order in Council for the Kingdom of 13 July 2012 (Stb. 2012, no. 338).

211 These measures were suggested by the Committee on Financial Supervision (CFT). This Committee reviews the annual budgets of Curaçao and Sint Maarten based on the consensus-Kingdom's Act on Financial Supervision on Curaçao and Sint Maarten (Stb. 2010, no. 388). The budget Act of Curaçao of 2012 revealed a deficit of Naf. 98 million which had to be restructured. For more information on the suggestions of the Committee on the budget 2012, visit www.cft.cw.

212 See letter of the Chairman of the Committee on Financial Supervision (CFT) to the Minister of Finances of Curaçao, ref. cft 201400035, 27 February 2014; Press release of the Committee on Financial Supervision (CFT) Chairman Age Bakker: "Curaçao has fully complied with the instruction", 7 March 2014, available on www.cft.cw, downloaded on 8 March 2014; see also daily newspaper 'Amigoe', 7 March 2014, p. 1.

213 See for instance daily newspaper 'Amigoe', 8 May 2014, pp. 1-2.

214 The Explanation Memorandum of the Budget Act of Curaçao 2013, pp. 2-28.

215 Ibid, pp. 234-239; only in the field of (youth) crime reduction is there an intention to create inter-ministerial cooperation between these Ministries following the latest increase in (violent) crimes.

No specific strategies were drawn up and no financial means were allocated for the development of women (and men).²¹⁶ The financial support which many NGOs²¹⁷ received for the execution of their programmes and projects was incorporated, but no details on the contribution of each organisation or on the cuts to their budgets were provided.²¹⁸

As of May 2014 I did not find any indication of the development of a cohesive gender policy by the Executive.²¹⁹ The formulation and implementation of aspects of the national social policy indirectly relate to and influence the position of women, but the Executive was not yet able to realise gender mainstreaming. In the area of education I came across the reintroduction of the Compulsory Youth Training programme and, in the area of labour, the implementation of a couple of (legal) measures linked to each other that affect the development of women.

§ 8.7 The NGO sector

NGOs play a prominent role in the realisation of developmental policies and human rights law. Some perform additional tasks in that implementation, which strengthens their position on the objectives laid down in governmental policies. One of their weaknesses, though, is that the so-called development NGOs do not act from a human rights perspective or provide human rights education. They are neither aware of nor use consciously the human rights machinery available to them.²²⁰ This undermines the role they are supposed to have as ‘vernacularisers’²²¹ or translators of international human rights standards and values into meaningful domestic instruments set in the local context.

Curaçao recognises numerous, mainly development, NGOs. A significant number of them are permanently active, while others are not active at all. Many operate in a certain area without knowledge of or cooperation with other NGOs active in the same area. All in all, the local NGO spectrum is very fragmented and blurred.²²² In the field of gender and women’s development, several development NGOs have delivered a significant contribution in the course of time. These organisations are not always able or capable to provide the required support to women or to the Executive with regard to the development of a sensitive and

216 Naf. 21.95 million and Naf. 232,000 respectively were allocated to the fields of Family and Youth. The Ministry had a total budget for 2013 of respectively Naf. 167.133 million and Naf. 11.35 million. Due to (future) budgetary cuts and the implementation of austerity measures, the budget of this Ministry has been reduced for the coming years. See the long-term overview in the Explanatory Memorandum of the Budget Act of Curaçao 2013, p. 242.

217 This time Steering Committee Curaçao was included among the NGOs which received financial support from the Government for the execution of their activities.

218 The Explanatory Memorandum of the Budget Act Curaçao 2013, pp. 245-246.

219 This assessment was confirmed by Mrs Y Bakhuis, the officer then in charge of the sector Family and Youth of the Ministry of Social Affairs, Labour and Welfare, on 14 September 2012.

220 Brett 2009, p. 624.

221 Biholar proposes this process following an explanation provided by Merry. The process of translation is termed ‘vernacularisation’. See Biholar 2013, pp. 68-70.

222 This information was obtained through interviews with several NGOs. See overview of interviewed persons; consider also Report ‘NGOs op Curaçao: Identificatie van belangrijke knelpunten en voorstellen tot verbetering’ of December, 2009; *Plataforma di NGO Korsou, Beleidsmemorandum: ‘Un kaminda pa un desaroyo sosial duradero’* 2008-2010. This is also the case for NGOs in the field of children’s rights. See ‘*The situation of children and adolescents in Curaçao*’, United Nations Children’s Fonds (UNICEF) 2013, p. 35.

customised gender policy from a human rights perspective and on human rights issues, as they often do not possess the necessary financial means, infrastructure or expertise.

Moreover, many receive their financial means mainly from governmental agencies, which makes them dependent upon the Executive and this weakens their position and a critical take on government actions. The contribution of, for instance, AMFO to the implementation of social policy in general and gender policy specifically, through the financing of their projects, was detrimental. In addition, the role of the NGO Platform of Curaçao as the national coordinating organisation of NGOs was crucial. Through a short assessment of the (defective) operations of the NGO Platform of Curaçao I was able to obtain a more accurate picture of the status of the contribution of NGOs as actors in the national gender policy and in the women's rights protection system.

§ 8.7.1 *The necessity for a local NGO Platform*

One of the objectives of the Social-Economic Initiative Curaçao was to support the social sector through the strengthening of the operation of the NGO field. A major actor in this field was the NGO Platform. As the NGO field was characterised by its fragmentation and lack of mutual cooperation, the Executive intended, by the strengthening of the platform, to stimulate coordination and cooperation among these organisations.²²³

It was the collaborative efforts of 10 umbrella organisations which led to the establishment of, first, the NGO network in 1997, which was then transformed into the NGO Platform of Curaçao²²⁴ in 2002.²²⁵ Several women's organisations, like the Women's Development Centre (SEDA) and the Steering Committee Curaçao, were involved in these initial developments. The threat of the discontinuation of development aid to NGOs in that period, due to a lack of the expected results, led the Netherlands to convene, with the federal Executive, the restructuring of the social sector, which resulted in the unification of the NGOs.²²⁶

By 2000, the former Netherlands Antilles and the Netherlands had agreed upon a new NGO subsidy policy. The involvement of the NGO network in the stipulation of this policy was useful.²²⁷ With the recognition of the NGO Platform in 2002 by the local Executive, a focal point in regard to NGO-related issues was instituted. In that same year the new financial institute, later known as AMFO, was set up as a result of cooperation between governmental actors and the NGO Platforms of the respective island territories. The benefits flowing from the setting up of AMFO, namely the unification of the subsidy structure and the establishment of the coordinating role of the local Platforms, were acknowledged by even the NGO Platform.²²⁸

223 'Sociaal Economisch Initiatief Curaçao: bouwen aan een zekere toekomst', version 26 March 2008, p. 57.

224 During this process the other islands also established their own NGO Platforms.

225 Bye-laws of NGO Platform Curaçao, March 2002.

226 Parliamentary report II 1998/1999, 26 605, no. 2, pp. 19-20.

227 The federal and local Executives tried to exclude the NGOs from the process. See Plataforma N.G.O. Kòrsou, *Geschiedenis, visie, missie, doelstellingen, structuur*, 15 September 2002 (no author), 15 September 2002, pp. 2-7.

228 *Ibid.*, pp. 8-10; Plataforma N.G.O. Kòrsou, *Jaarverslag 2004-2006 (eindconcept)*, (no date); Letter of the Director NGO Platform to the Executive Board of the Island territory Curaçao, no ref., 22 February 2007; *AMFO jaarrekening 2007*, Curaçao, March 2008, pp. 9-11.

§ 8.7.1.1 Objective of the local NGO Platform

The main objective of the NGO Platform Curaçao was the establishment of a consultation, coordination and cooperation body for NGOs. The unification of the NGOs in the general interest and the creation of self-reliance for that unified body, starting from the core values set out in the Universal Declaration of Human Rights, formed part of this process.²²⁹ The NGO members of this umbrella organisation were divided into different sectors related to the working areas and target groups of those NGOs.²³⁰ There was also a sector concerned with gender within the NGO Platform which consisted of 54 organisations in all.²³¹ To reach its objective, the platform was in charge of stimulating consultation and cooperation between the sectors of NGOs. It acted as the official dialogue partner for the Executive in regard to societal issues and gave advice on policy matters and performed surveys and, based on this, it drew up information on the needs of the population, which resulted in dialogue with the Executive and the formulation, support and monitoring of welfare policies.²³²

§ 8.7.1.2 Activities of the local NGO Platform

The activities of the NGO Platform were: the support of NGOs; the creation of unity and cooperation among NGOs; the engagement in a professional process by NGOs; and the institution of an effective way of communication among the NGOs and between the NGOs and the Executive. The community was by then in need of a more structurally operating social, economic and cultural sector.²³³

The initial activities of the platform provided support to the NGOs for the application of funds for their AMFO projects through its secretariat, which was set up in 2002.²³⁴ Cooperation between the platform and NGOs was eventually terminated in 2006, as a result of financial mismanagement and the forced reorganisation of AMFO afterwards.²³⁵

After an assessment in 2005 due to these occurrences and to deviation from its own structure, policy and objectives, recommendations on the improvement of its activities were made, which were directly related to the financial means which the organisation had to reach its goals.²³⁶ Since 2005, it had started to receive a structural subsidy from the local Executive. By 2007 the continuation of its activities was in danger as the local Executive did not comply with its financial obligation.²³⁷

With the drawing-up of a new development plan for the platform covering the period of 2008-2010, the new direction of this umbrella organisation was set in motion after a period of inaction. The Platform had several areas of interest and gender was one of them.

229 Article 2 Bye-laws of NGO Platform Curaçao.

230 Article 4 in conjunction with Art. 10 Bye-laws of NGO Platform Curaçao.

231 See Annex 5.

232 Article 3 Bye-laws of NGO Platform Curaçao.

233 Plataforma N.G.O. Korsou, Jaarverslag 2004-2006 (eindconcept), (no date), pp. 6-10.

234 There was a close cooperation between AMFO and the NGO Platform, for the submission and approval of projects by NGOs, since the former became operational in 2003. *Ibid.*, pp. 12-17.

235 *AMFO jaarprogramma 2007*, Bonaire & Sint Maarten, April 2007; *AMFO jaarrekening 2007*, Curaçao, March 2008, pp. 5-11; Information obtained from Mr G Willems, on 8 August 2012.

236 '*Plataforma di NGO Korsou, Beleidsmemorandum: Un kaminda pa un desaroyo sosial duradero*' 2008-2010 (concept), (no date).

237 Letter of the Director NGO Platform to the Executive Board of the Island territory Curaçao, no ref., 22 February 2007.

It was determined by area what the necessities were and whether these would be translated into strategies. The gender-related strategies were countless.²³⁸

By 2009, in anticipation of the creation of the autonomous country Curaçao, the local Executive maintained cooperation with the NGO Platform, which implied recognition of its added value. With this came new conditions with which the NGO Platform had to comply. For the strengthening of its operations and of its members, financial means were made available through the Social-Economic Initiative.²³⁹ In accordance with this, an extensive project proposal²⁴⁰ was submitted by the NGO Platform containing projects²⁴¹ with the objective to strengthen the social sector. However, for inexplicable motives, the NGO Platform has discontinued its activities for over five years now.²⁴² The NGOs maintain currently separate contact with the Executive directly. It is unclear whether the platform will resume its activities, and under which conditions, on behalf of the NGOs and the population.

§ 8.7.2 *Projects and activities of a selection of NGOs*

There are several development NGOs operating in the fields of women's development, gender and family issues. However, they do not start from a human rights perspective or act as conscious translators of international human rights standards into the local situation.²⁴³ Many often operate from a one-issue approach. Although some receive financial support from the Executive, these funds do not cover all their projects and activities. Moreover, the Executive only supports the projects which it considers to be important for the execution of its (social) policy. So, these NGOs are obliged to report periodically to the Executive on the progress related to the execution of their activities. This makes them dependent upon and uncritical of the State-Government. There are also other NGOs that were mainly dependent on the support provided by AMFO and third parties.²⁴⁴ Currently, the majority of these NGOs have insufficient (financial) means and expertise to cover their structural activities, a situation which constitutes a major challenge for the roles which they have to fulfil. Consequently, there follow some short remarks on the projects of a selection of NGOs

238 The projects included the: performance of research; development of gender-related programmes; analysis of the applicability and review of (human rights) treaties; taking of action to protect women and their children against abuse; integration of a gender perspective into policies; promotion of the equal participation of women; empowerment of women to break out of the cycle of poverty; and special attention to the situation of young (single) mothers. See 'Plataforma di NGO Korsou, Beleidsmemorandum: Un kaminda pa un desaroyo sosial duradero' 2008-2010 (concept), (no date), pp. 26-29.

239 'Programma van Eisen sector Onderwijs, Sport, Cultuur en Educatie van het Eilandgebied Curaçao, tussen het NGO Platform Curaçao en de Dienst voor Cultuur en Educatie (concept)', (no date).

240 'Versterking van het Maatschappelijke Middenveld op Curaçao', SEI-project of the NGO Platform, (no date).

241 It contained four coherent projects for the total amount of Naf. 1.33 million.

242 Information obtained from Mr R Doran (the president of the NGO Platform), on 9 August 2012 and Mrs D Schoop-Frans (Board-member of the NGO Platform), on 24 August 2012.

243 Curaçao has had, for several years, a local chapter of Amnesty International though. I was not able to obtain information on its activities. In 2007 the Dutch Caribbean Human Rights Committee (DCHRC) was set up modelling the structure of the Dutch section of the International Commission of Jurists (NJCM). As one of its co-founders and president, I have to note that a year later it was forced to suspend most of its activities as a consequence of the resignation of most of its board members and an overload of activities and responsibilities. It is intended to restart its activities in the near future.

244 CAFRA for instance relies completely on private funds and international support. Information obtained from Mrs G Archer, on 9 August 2012.

for a concrete view on their contribution, effective or otherwise, to the effectuation of the gender policy and women's rights.

1. *The Women's Development Centre (SEDA)*

The Women's Development Centre (SEDA) receives, on an annual basis, financial support from the Executive²⁴⁵ for the execution of its projects and activities in different social areas. These projects are not solely directed at the empowerment and emancipation of women and their families, but also at other social groups such as young people, (young) fathers, and the general public. The activities of the Centre concentrate on eight categories of activities, with programmes in the areas of social assistance, poverty reduction, education and responsible parenthood, and the commemoration of international days.²⁴⁶ In its 'contract' it is stipulated that, besides these aforementioned activities, the Centre is obliged to participate at the meetings and workshops called by the Ministry of Social Affairs, Labour and Welfare and to cooperate and collaborate with other NGOs within the sectors of the Ministry. It offers courses and training²⁴⁷ for, inter alia, single mothers and fathers and youngsters. As of 2012 it has opened a shelter for temporarily homeless mothers and children who are desperately waiting for a house to be given to them by the local housing association '*Fundashon Kas Popular*' (FKP). In addition, childcare is offered by the Centre and since March 2013 a special programme²⁴⁸ has been provided to youngsters without prospects, particularly young men, so that they can obtain sufficient qualifications for participation and inclusion in the labour market and in society.²⁴⁹ As a member of the Dutch 'VN Netwerk Vrouwenverdrag' since 2013 it is supposed to compile a shadow report on the situation of women in Curaçao. As of April 2014 it has not yet done this.²⁵⁰

2. *The Steering Committee Curaçao*

The activities of Steering Committee Curaçao are financed in accordance with its contract with the Executive. It receives funds²⁵¹ for its programmes on training, education and lectures for its member organisations and their members. Projects directed at the general public involve, among other things, an annual course, the publication of a bulletin, and the

245 The amount is around Naf. 350.000 a year. The Centre receives its funds on a monthly basis. See e.g. Ministerial decree of the Minister of Social Affairs, Labour and Welfare, 23 May 2011, no. 2010/114038.

246 Ibid.

247 Courses such as '*Hende*' ('Person/People'), '*Ken mi ta*' ('Who am I') for young parents, '*Konekshon Real ku Alma (KRA)*' ('Real connection with the soul') [translation by A.R.], and Restorative Justice practices are annually organised and offered to the public. See '*Lijst activiteiten 'Sentro di desaroyo pa hende muhe I su famia' (SEDA) 2013*', (no date).

248 The programme for the education and training of handymen called 'Techno Future school' forms part of the Compulsory Youth Training Programme. See '*Raamplan Handyman Techno Future School: Werkplaats voor 'drop-outs' en 'job coaching' of terugplaatsing naar school*', (no date).

249 '*Half jaar activiteiten verslag periode januari-juni 2013, Fundashon Famia Plania*', (no date), pp. 7-9.

250 See '*Nieuwsbrief Netwerk VN-Vrouwenverdrag*', February 2014, available on: www.vrouwenverdrag.nl; Information obtained from Mrs M Leetz-Cijntje, on 12 April 2014.

251 It received for 2011 the amount of Naf. 105,208.

commemoration of international days.²⁵² The objective of these projects is directed at the motivation of and awareness-raising among its members and the population.²⁵³

3. *The Association for Responsible Planned Parenthood*

Responsible parenthood has been encouraged since 1965 by the Association for Responsible Planned Parenthood (*Fundashon Famia Plania*) at the local level. It operates in the field of public health, addressing, inter alia, the sexual and reproductive rights of women and also men.²⁵⁴ According to its contract with the Executive²⁵⁵ it provides programmes on: the reduction of teenage pregnancies; the promotion of safe sex and the knowledge and use of contraceptives among (illegal)²⁵⁶ sex-workers; the promotion of sex education among the population; and the promotion of safe sex among male and female homosexuals.²⁵⁷ For its other activities²⁵⁸ it has to use other methods to obtain the necessary financial means. Despite the important services it has been providing to society, the financial means it receives from the Executive are not sufficient to secure its programmes.²⁵⁹ Moreover, its financial situation has not improved. The Association is one of the few organisations which did not receive (additional) financial support from AMFO. However, due to its affiliation with the International Planned Parenthood Federation, through its membership of the Caribbean Family Planning Affiliation Limited, it has been able to obtain some additional (financial) support. It sells its contraceptive products at a lower price to the public to generate additional funds. In sum, the products and the services it offers are of benefit to the (sexual and reproductive) rights of many women and men and they are indispensable.

4. *Foundation Dedima*

This NGO was established in 2009. It focuses mainly on the issue of domestic (gender-related) violence. Its objectives are the combating of domestic violence and aggression against women and children and relationships-related violence.²⁶⁰ Its programme contained initially, inter alia, the offering of training to people on the issue of domestic (gender-related) violence, awareness campaigns, the undertaking of research on domestic (gender-related) violence and on the necessity for the further adoption of legislation for this type of crime, and the promotion of sexual education. In addition, it was concerned with the awareness of the State-Government of its responsibility to comply with international law and adapt domestic law in accordance with it, and the creation of alliances with other NGOs in the

252 Ministerial decree of the Minister of Social Affairs, Labour and Welfare, 20 May 2011, no. 2010/114055; Overview projects Steering Committee Curaçao for 2013; 'Begroting voor projecten Steering Committee voor het jaar 2013', Steering Committee Curaçao, (no date).

253 See 'Relato Sekretatio Steering Committee Curaçao 2011-Mart 2013' (J. Hutchinson-Poulin), (no date).

254 See e.g. Van der Marks 1973, pp. 243-245; Van Dijke & Terpstra 1987, pp. 80-86; Brochure *Fundashon Famia Plania* 2011, (no date).

255 This NGO falls under the competence of the Minister of Public Health, Nature and Environment.

256 For more information on the situation of illegal sex-workers, see Frans-Schoop (no date).

257 'Fundashon Famia Plania' received, for 2012, with regard to the execution of these activities, only Naf. 140.400. Ministerial decree of the Minister of Health, Environment and Nature, 4 May 2012, no. 2011/39987. For a description of the products see 'Offerte 'Famia Plania' Activiteitenplan n.a.v. Programma van Eisen 2012. Seksuele reproductieve gezondheidszorg', (no date).

258 See also 'Half jaar activiteiten verslag periode januari-juni 2012, Fundashon Famia Plania', (no date).

259 Information obtained from the Director of the Association for Responsible Planned Parenthood, Mrs D Schoop-Frans, on 24 August 2012.

260 Article 2 Bye laws of 'Fundashon Dedima'.

field of the struggle against this type of violence also formed a part of its aims.²⁶¹ Whether these objectives have been worked on and accomplished could not be established.²⁶² Only the creation of an alliance with other NGOs on the issue of struggle against domestic (gender-related) violence was confirmed.

5. *Foundation 'Muhenan Arma I Uniforma' (hereafter: 'Fundashon MUA')*

The '*Fundashon MUA*' is a women's organisation which since 2007 has been promoting the emancipation of women in general, and particularly of women active in armed, security and uniformed forces and services and the police. The social engagement of women through education and training is fostered by it.²⁶³ However, only women working in this sector²⁶⁴ are member of this organisation. Its activities are directed at the social development of the community, combating undesirable situations and excesses in the working sphere of its members, and the guaranteeing of the effective implementation of the national gender policy. In addition, the organisation is involved with the strengthening of the participation of women in the decision-making process of the organisations concerned, the creation of a policy directed at the recognition of the possibilities of women to devote attention to their child-rearing and socialisation roles, and the strengthening of a human resources policy aimed at the career development of women.²⁶⁵ Its annual activities cover the commemoration of international days and the anniversaries of the establishment of the armed, security and uniformed institutions.²⁶⁶ As its members are civil servants it does not receive financial support from the Executive.²⁶⁷

6. *Stichting Maatschappelijk Zorg en Herstel*

The '*Stichting Maatschappelijk Zorg en Herstel*' was founded in 2008. Its objectives are to provide shelter, temporary housing and social assistance based on social recommendation to people in need. The alleviation of crises with the aim of educating the person involved so that he/she can participate and function independently in society again, also comes within its scope. It gives advice to governmental and private organisations on their policies on social problems in general and on social assistance in particular. The foundation provides services to several social groups such as underage children, young adults between 18 and 24 years of age with social and family problems, and battered women.²⁶⁸ As an umbrella organisation it has the coordination and supervision of four sub-organisations²⁶⁹ which provide shelter, (temporary) housing and foster care. In regard to its programmes directed

261 '*Programa di Dedima a Termino Kortiku*', (no date); '*Programa di dos mitar di aña 2009; Dedima*', (no date).

262 The necessary information was not provided, despite requests for it.

263 Article 2 Bye laws of '*Fundashon MUA*'.

264 The armed agencies and services are: the Curaçao Police Forces, Immigration Services, the Penitentiary and Correction Centre of Curaçao, the Surveillance Services of Curaçao (SKS), the Volunteers Forces (VKC), and Customs.

265 Manifest Internationale Dag van de vrouw, '*Steunend op eigen kracht, doch met de wil elkander bij te staan, samenwerken en netwerken*', Fundashon MUA, 8 March 2007.

266 '*MUA Activities & Events Calendar*', (no date).

267 Information obtained from Mrs C Martha and Mrs A Poulina-Bitorina, on 28 September 2012.

268 Uittreksel '*Stichting Maatschappelijke Zorg en Herstel*', Register Kamer van Koophandel van Curaçao, downloaded on 21 January 2013.

269 These are: (1) the foster care centre '*Mi Otro Kas (My other home)*' (2008); (2) the Guidance to be and life independent (2008); (3) the shelter for battered women, '*Time Out Curaçao*'; and (4) the Open (temporary) shelter for women '*Parada (the Stop)*' (2012) [translation by A.R.].

at the re-socialising of both young women and men, the foundation offers housing and assistance for a period of 18 months to youngsters between 18 and 24 years of age with social and personal problems. The youngsters receive intensive guidance and (financial) assistance so they can become independent and self-sufficient individuals in society.²⁷⁰ The shelter for battered women, 'Time Out Curaçao',²⁷¹ is one of its sub-organisations which offer temporary housing to battered women who are in life-threatening situations. Women find their way to this secure shelter through the guidance of, inter alia, the 'Slachtofferhulp' foundation. The 'Parada',²⁷² an open-facility shelter since 2012, provides temporary accommodation to women with social and relationship problems that are not as severe and life-threatening as those of the previously mentioned group of women. The 'Stichting Maatschappelijk Zorg en Herstel' receives annual financial support from the Executive for its activities.²⁷³

7. Stichting Slachtofferhulp Curaçao

Assistance and support to victims of crimes or car accidents and to their families has been given, since 2007, by the 'Slachtofferhulp Curaçao' foundation.²⁷⁴ It conducts judicial procedures in the name of this group of victims.²⁷⁵ The foundation receives, as of 2011, structural funds from the Executive on an annual basis.²⁷⁶ It provides services 24/7 to the population. Despite the fact that this organisation is not a women's organisation, it does have a gender aspect as the majority of its clients are women.²⁷⁷ Moreover, its figures show that most of its victims seek assistance for crimes related to domestic (gender-related) violence.²⁷⁸ The victims are, after initial assistance, directed to other institutions for further support. The foundation maintains, for the performance of its work, close collaboration with governmental agencies within the judicial system and with NGOs. Since 2012 it has also been providing assistance to victims of human trafficking based on provisions of the

270 The foundation manages two housing facilities, one for male and one for female clients, and also several houses for the attainment of independent living. Social Jaarverslag 'Stichting Maatschappelijk Zorg en Herstel' 2012, (no date), pp. 5-10.

271 The shelter, 'Time Out Curaçao', previously known as 'Kas di Sokoro (the Shelter)', was established in 2003. It was managed by the local Bureau of Women's Affairs up until 2010. Information obtained from Mr A-M de Vries, on 24 September 2013.

272 The 'Parada (The Stop)' was established in 2012 with financial support from 'Samenwerkende fondsen'. Information obtained from Mr A-M de Vries, on 24 September 2013.

273 It received in 2011 and 2012 respectively Naf. 1.5 million and Naf. 1.725 million from the Executive. But its expenditure was in both years over Naf. 2 million, while it had a total budget of respectively Naf. 1.94 million (2011) and Naf. 1.98 million (2012). See financial overview in: Social Jaarverslag 'Stichting Maatschappelijk Zorg en Herstel' 2012, (no date), p. 18.

274 Its predecessor, the 'Stichting Slachtofferhulp Nederlandse Antillen' was established in 1998 by the Government of the former Netherlands Antilles. The initial board members were individuals active in the justice system, social workers and lawyers. The foundation went through a restructuring afterwards and it was restarted by a group of professionals in 2007. See 'Stichting Slachtofferhulp 2007-2012', 'Al vijf jaar en nog veel meer te gaan' 2007-2012, Stichting Slachtofferhulp, (no date).

275 Article 2 By-laws of 'Stichting Slachtofferhulp Curaçao'.

276 It received in 2012 the amount of Naf. 280,600. See Ministerial Decree of 19 April 2012, no. 2012/015122.

277 In 2011 of the total of 538 registered cases, 143 were men and 395 were women. In 2012 of the total of 685 cases, 175 were men and 510 were women. See Jaarverslag 'Stichting Slachtofferhulp' 2011 (no date); Jaarverslag 'Stichting Slachtofferhulp' 2012 (no date), p. 24.

278 From the total 685 cases registered in 2012, 339 cases were related to domestic (gender-related) violence. See Annual reports 'Stichting Slachtofferhulp Curaçao' of 2010, 2011 and 2012.

new Criminal Code of Curaçao.²⁷⁹ Awareness-raising campaigns and activities are organised annually, such as the campaign 'No Mas No More' directed at awareness and the fight against domestic (gender-based) violence.

8. *The Alliance*

In 2011 a group of NGOs formed an alliance²⁸⁰ in the struggle against domestic (gender-based) violence. By doing this, they complied with the stipulation incorporated in the Government Programme 2010-2014 for the development of a national plan on the combating of domestic (gender-based) violence.²⁸¹ With the establishment of the alliance, the objective of the creation of a national plan on the combating of domestic (gender-based) violence came closer. A permanent Committee was set up in 2012²⁸² for the formulation of this plan.²⁸³ This Committee, consisting of representatives of four Ministries²⁸⁴ and three representatives of the alliance of NGOs, is responsible for the design and execution of this national plan to stop domestic violence and child abuse.²⁸⁵ Although the Human Rights Council was informed of a draft plan in 2012,²⁸⁶ as of April 2014, it had not been officially presented or discussed. This was to take place at the end of 2014.

§ 8.8 Conclusion

For the evaluation of State accountability in the realisation of women's rights domestically, a situational analysis was performed. I examined the contributions and role of governmental agencies from above and of NGOs from below. My assessment was made based on the principles of the human rights-based approach, starting from the accountability and participation aspects and gender mainstreaming as mandated in Article 3 Women's Convention and defined by the Economic and Social Council. For the determination of the status of the gender policy and the national machinery in Curaçao, I had to take the 'old' situation in the former Netherlands Antilles into consideration.

My examination showed that as far as the contribution of the Executive was concerned, the Antillean national machinery was divided among federal and local governmental agencies and these agencies delineated and executed the gender policy at the local level. After

279 See Jaarverslag 'Stichting Slachtofferhulp' 2012 (no date); Information obtained from Mrs D Leer, on 19 September 2013.

280 The Alliance consists of the following NGOs: 'Fundashon Bos di Hubentut', 'Stichting Slachtofferhulp Curaçao', 'Dedima', 'Fundashon MUA', the Women's Development Centre (SEDA), Amnesty International Curaçao, 'Yave', CAFRA, 'Stichting PSI-Skuchami', 'Nos T'ei pa Otro', 'Fundashon Yuda bo yu', Handicap Rights Foundation and 'Stichting NOW', Steering Committee Curaçao.

281 'Programa di Gobernashon 2010-2014, Pa un Kòrsou Soberano, Solidario i Sostenibel', p. 155.

282 The National Decree upholds general rulings on the task and functioning of this Committee. A rule of procedures regarding its internal functioning was also been drafted. See (draft) rule of procedure of the Commission on the national struggle against violence against children and youngsters, domestic and relationship-related violence.

283 National Decree on the setting-up of the Commission on the national struggle against violence against children and youngsters, domestic and relationship-related violence of 16 October 2012, no. 12/4501.

284 The four Ministries are: the Ministry of Social Affairs, Labour and Welfare, the Ministry of Justice, the Ministry of Education, Science, Culture and Sport, and the Ministry of Health, Environment and Nature.

285 Articles 2 and 4 National Decree on the setting-up of the Commission on the national struggle against violence against children and youngsters, domestic and relationship-related violence.

286 A/HRC/WG.6/13/NLD/1, para. 88.

Curaçao gained its 'autonomous' status in 2010, the machinery came under the Ministry of Social Affairs, Labour and Welfare. Its sector for Family and Youth is in charge of and responsible for the coordination and development of the gender policy. It has been basically preoccupied, however, with the policy areas concerning young people and the family. Women's and gender issues are only considered in the context of domestic (gender-based) violence. Often, inter-ministerial cooperation is required for the realisation of measures in this area. I was, however, unable to establish whether this cooperation had actually occurred in practice due to a lack of information from the responsible agencies.

It is not only the Executive which has a role in the protection and fulfilment of women's rights, but also the legislature and the judiciary. The legislature has to assume its role in the introduction of gender-sensitive legislation, and by putting such laws not only under a 'human rights proofing' review, but also under an equality review which prohibits and excludes the introduction of gender-based discriminatory laws. The legislature should also employ its budgetary right to demand the realisation of gender mainstreaming. As long as it does not take the necessary steps to further guarantee protection against gender-based discrimination, local women will lack the adequate protection they need and are entitled to. The judiciary provides in its turn relief through its reviewing authority. The challenges lie in that the majority of the judges are 'foreigners', based on a temporary basis in Curaçao, and not really familiar with the local realities. The judiciary is also involved in the determination of the applicability, direct or indirect, of the (substantive) provisions of the Women's Convention in the domestic legal system, following the Dutch legal system and Dutch case-law. In my view, a progressive and dynamic approach, based on the essence of the Convention and the soft law of the Committee, by the judiciary can definitely strengthen the domestic protection system, particularly when I consider the example given in the *Fundashon Kresh Montagne* case at country level. With the incorporation of the provisions of the Women's Convention into legal norms and concepts openly applied in the domestic legal system, another possibility to strengthen the domestic protection system arises for the judiciary. The future contribution of a national human rights institution or the better equipping of the Ombudsperson may also strengthen the governmental capacity.

With regard to the presence of a cohesive gender policy, I can conclude that none was drawn up in the former Netherlands Antilles. No in-depth documentation was retrieved or made available to me to demonstrate the contrary. The lack of documentation, cooperation and will power among certain civil servants and people involved in the social sector confirmed my claim. When people spoke of an Antillean gender policy, they meant a policy directed at legal reforms and ad hoc programmes and projects. My examination showed that, despite the authority of the federal Executive to develop a cohesive gender policy in accordance with international human rights standards that had to be executed by the local governmental agencies and NGOs, which could have been adopted by the Executive of Curaçao after 2010, this was not done. In some cases the local Executive autonomously developed its own policies. Local NGOs were instrumental in this. The local Bureau of Women's Affairs was responsible for entering into contracts with these NGOs for programmes it considered to be directed at the empowerment of women, which started from a family- and community-based approach in the last years of its operations. The parameters for its consideration were not clear as the documents on the procedures and its authorities were not made accessible. At both federal and local level the (non)governmental organisations in charge of the

execution of the gender policy worked from their experience and not from a recorded and universalistic human rights-based approach on gender issues, or on an institutional ground and from a programme-minded approach, which impeded a transformation towards a more dynamic and modern approach benefiting the advancement of local women. I assume that this approach continued in the country Curaçao after 2010, considering the absence of a cohesive gender policy and concrete direction towards a transformative and progressive attitude.

In the field of finance it can be seen that the federal Executive introduced, with development aid from the Netherlands which has been managed by USONA since 2004, several governmental programmes that affected (in)directly the situation of the population, including women. The whole spectrum of financing the programmes of NGOs revealed a very complex picture, as many NGOs received support from the local Executive, AMFO and (in)directly from USONA. My examination of the Social-Economic Initiative Curaçao of USONA on its gender-component showed that, with the exception of a couple of projects, the programme did not include specific projects on the development of women. The monitoring of the Social-Economic Initiative Curaçao in 2011 underlined importance and impact of the programme for the society, yet many shortcomings were registered, particularly related to the sustainability of the projects. To secure and further both the advancements which have been made and also the inclusion of the projects, the Executive has to create a comprehensive (gender) policy and allocate financial means for projects aimed at the empowerment of the population, including women.

Based on the new governmental structure, the subsequent coalition agreements and the governmental programmes, I was able to confirm that the emphasis within the general social policy of the administrations lay on poverty reduction, with emphasis on the strengthening of the institution of the family, on the elderly and young people, on neighbourhood development and on employment, among other things and not so much on the advancement of women. Moreover, the status of women is only considered from a family-based approach. As the issue of the elimination of domestic (gender-based) violence was the only policy area where women were (in)directly taken into account, the establishment of a national plan on domestic violence between the Executive and NGOs and the setting-up of a monitoring commission became the priority and not the creation of a national plan of action on gender equality and the advancement of women. This approach was underlined and affirmed in the respective annual budgets where, again, no priority was given to women's issues and gender mainstreaming, with the exception of compliance with the reporting obligation set out in the Women's Convention.

No additional documentation was made available by the Executive to disprove my appraisal on the non-realisation of goals on gender and women from a human rights perspective. For the implementation of the family- and youth-based social policy, financial means were allocated in the budgets of 2011-2013 for some NGOs. In 2013 (and also 2014) the means of NGOs and governmental agencies decreased as a result of statutory austerity measures that had to be introduced to balance the budgets; this was a legal measure imposed by the Kingdom in 2012 on Curaçao.

Seeing that many NGOs for many years received financial support from AMFO, an administrator of Dutch funds, for the execution of their projects and programmes, the social development and well-being of the inhabitants was jointly determined by an external actor

and not so much by the Antillean Executive and afterwards by the Curaçaoan Executive. Prior to 2010 women were excluded from the target groups of AMFO. With the phasing out of AMFO in 2013, and USONA in 2014, many NGOs confronted major problems, as there is no certainty that the Executive will be able to cope with the financial burden for the realisation of the projects after 2015, as promised. The phasing out of the development (financial) aid from the Netherlands has had an unprecedented and devastating effect on the operations of NGOs and society.

It became evident to me that, although the contribution of development NGOs is unquestionable, collaboration among them remains deficient. Even worse, the operations of NGOs from a human rights perspective are missing. The establishment of the NGO Platform in the 1990s prompted by the fragmentation and lack of cooperation among NGOs showed a progressive step in the right direction. Its contribution lay in the strengthening of the NGO sector and in its role as a dialogue partner for the Executive on welfare and social policies, including gender. The effectiveness of this platform could not be proven or confirmed, however, seeing that it confronted many (financial) challenges during its operations. Its discontinuation for inexplicable motives in 2009 left the sector without the necessary coordination and capacity to form an effective force capable of addressing the many social challenges, including those in the area of the realisation of women's rights and women's development. This contributed to the persistence of a random approach to gender issues and to the fulfilment of women's rights in accordance with the Women's Convention by NGOs as responsible translators.

Only the Alliance among a group of NGOs on the issue of domestic (gender-based) violence provides some kind of collaboration. This has a very narrow approach to gender and women's issues and women's human rights though. And, as already shown, many (development) NGOs contribute substantially with programmes directed at the well-being and development of women and men. Yet, their inadequate structure, lack of expertise, personnel, financial means and infrastructure, dependence on governmental funding and unfamiliarity with the present human rights discourse, cause their programmes to lack the desired sustainable and emancipation effects. Furthermore, as the monitoring mechanisms of the Executive for evaluating the execution of its own policies and programmes and those of NGOs are not in place, it remains impossible to validate the programmes on their merits. Additionally, the lack of expertise on gender issues in the Ministry of Social Affairs, Labour and Welfare, the instability and uncertainties in the administration and infinite internal power struggles affect adversely the creation and execution of a cohesive gender policy from a human rights perspective. All in all, in my considered opinion, the national machinery on gender is weak and defective. This results in the lack of a structured and well co-ordinated gender policy, in the ineffective realisation of gender mainstreaming in national policy, and in the lack of realisation of women's rights in accordance with international standards and norms.

Chapter 9

GENDER STEREOTYPES IN CURAÇAO AND THE STATE-GOVERNMENT'S OBLIGATIONS UNDER ARTICLE 5 WOMEN'S CONVENTION

§ 9.1 Introduction

The discrimination against women is the result of patriarchal legal, social and religious constructs in gendered societies. The two-fold categories of superiority and inferiority, male and female, public and private sphere, black and white, gender roles and gender stereotypes reinforce the discrimination and oppression suffered by women. The manner in which harmful gender stereotypes and fixed parental roles are constructed and maintained to the disadvantage of women is entrenched in the functioning of societal institutions and actions of individuals based on these two-fold categories. The position which women take in contemporary Curaçao stems from the imperialistic, colonial, racial socio-cultural constructs within society and institutionalised differential approaches. So, their status is not only determined by their sex, but also by their race and class among other things.

Article 5 Women's Convention sets the parameters for the State-Government to develop (legal) measures, programmes and policies, through which the cultural and social transformation of gender stereotypes and gender-based differential constructs can be accomplished. It addresses two other areas, namely the responsibility of men and women in the education of their children and the emancipation of women. Therefore, is it really reasonable to think that the inability of local women to effectively make use of their equal rights, established in human rights law, is due to the social and cultural patterns of conduct that exist in society? These patterns are inherently connected with gender construct and the gender-based stereotypical approach in the law, legal and societal institutions and also the actions of individuals.

As the development of local women is firmly connected with the educational and labour opportunities provided by societal institutions, factors like the public and private sphere dichotomy as a gender-based distinction influence the (un)equal treatment they receive. I examine therefore whether and to what extent Curaçaoan women are affected in their development by gender stereotypes and fixed parental roles, and whether the effectuation of the necessary societal and cultural transformation can stimulate State accountability, the empowerment of women and the connection with values and standards of (women's) human rights law within the designed framework.

In this examination § 9.2 contains an elaboration on Article 5 Women's Convention and the State-obligations it contains. The General Recommendations on the meaning of Article 5 are looked into. Subsequently, § 9.3 contains remarks on the concepts of culture and cultural identity in Curaçao. The centrality of women in the family sphere is addressed

in § 9.4. The meaning of (gender) stereotypes in society is dealt with afterwards in § 9.5. § 9.6 examines the influence of the institutions of religion and of language on the development of local women as right-holders. The following three sections, § 9.7 to § 9.9 provide additional information on three selected areas in which the gender aspect becomes visible. They contain respectively remarks on gender (relations) in the formal educational system and in the labour sector and, finally, the issue of teenage pregnancy is addressed. The gender constructs and gender stereotypes that affect the advancement of women are pointed out here. The chapter concludes with several remarks on the findings.

§ 9.2 Article 5 Women's Convention¹: the transformation of gender-stereotypes and fixed parental roles

Article 5 paragraph a Women's Convention enhances a provision which indicates to State parties that they are obliged to take all proper measures to modify social, cultural and religious stereotypical perceptions that negatively influence the full development of women within society. It addresses not only the discrimination against women, but also the structural social and cultural constructs on gender roles which ultimately determine the treatment which women receive. Despite its legal limitations the significance of the provision for the emancipation of women is undeniable.² States were given instructions to introduce (legal) measures with the main objective of changing and transforming the social and cultural patterns which determine the conduct of men and women within society. Its ultimate objective is the eradication of practices of prejudice and customary behaviour which find their grounding in the dichotomy of inferiority and superiority between women and men. The core problem of the subordination and oppression of women worldwide is attended to by this provision as it goes beyond simple instructions for the State to eradicate gender-stereotypes in the media and in educational materials.³

The matter gets more complicated when I take Article 5 paragraph b Women's Convention into consideration. This provision confirms the State's obligation towards proper family education and a better understanding of maternity as a social function. The interests of the children as the prevailing preoccupation and consideration of both parents is guaranteed hereby. The approach that the younger generation should obtain a proper indication of their future roles through education from their parents and the State is, however, highly exaggerated according to Lijnzaad.⁴ Effectively, the two paragraphs form the two sides of the same coin, as they mandate that the negative gender stereotypes in both areas of society should be replaced by the recognition of women's contribution to society and the equal sharing of parental responsibilities, as Holtmaat puts it.⁵

1 Article 5 Women's Convention finds its origins in Art. 3 of the Declaration on the elimination of discrimination of women (DEDAW) of 1967. Article 3 DEDAW states: 'All appropriate measures shall be taken to educate public opinion and to direct national aspirations towards the eradication of prejudice and the abolition of customary and all other practices which are based on the idea of inferiority of women.' The scope of Art. 5 is in some aspect broader than that of Art. 3 DEDAW, while in others it is narrower. For a comparison between these provisions see Holtmaat, 2012, pp. 151-153.

2 For remarks on its functions, limitations and possibilities for the realisation of women's rights see § 9.2.1; see also Lijnzaad 1994, pp. 43-45; Biholar 2013.

3 Holtmaat 2003, pp. 222-223.

4 Lijnzaad 1994, p. 47.

5 Holtmaat 2012, p. 142.

§ 9.2.1 *Article 5 Women's Convention and its functions*

Article 5 Women's Convention forms, together with Articles 1, 2, 3 and 24 Women's Convention, the interpretative framework for the obligations and rights ensured in the Convention. It has four distinctive functions through which the eradication of gender stereotypes and fixed parental roles, which perpetuate the discrimination against women, can be accomplished. These functions regard the framework as being: (1) a guideline for the proper interpretation of the Women's Convention; (2) a catalyst for a proper policy on stereotypes; (3) an instrument in the real fulfilment of human rights of women; and (4) an instrument for the broadening of the implementation of the Convention.⁶ Although the transformation of this dynamic provision into a directly enforceable legal norm has been qualified by many as problematic, the Committee, through its case-law, has given direct legal enforceability to it and has been using it as a progressive reviewing instrument.⁷ The most significant way in which the provision is used by States is when they introduce new policies and legislation on gender equality. Actually, governmental agencies, as duty-bearers together with civil society, should take all the functions of the provisions into account when developing gender-sensitive policies, programmes and legislation for the fulfilment of women's rights. The State reserves at all times the liberty to determine how it opts to implement its obligations under this provision, though.⁸

The fact is that legal, social and religiously-based institutions, language and actions of individuals keep producing asymmetrical results for social groups in a society that maintains gender stereotypes and fixed parental roles.⁹ Article 5 Women's Convention, together with the other provisions of the Convention, lay down a foundation for a transformative approach to equality that favours the changing of cultural and social patterns towards a more egalitarian society.¹⁰

§ 9.2.2 *General recommendations on Article 5 Women's Convention*

For a better comprehension of the meaning and implications of Article 5 Women's Convention the specifications provided by the Committee come in handy. Although the Committee has not issued a specific recommendation on the manner in which the provision should be applied by States, it has given guidelines through its General Recommendations¹¹ and case law.

First of all, in General Recommendation no. 3¹² the Committee flagged up 'the existence of stereotyped conceptions of women, owing to socio-cultural factors, that perpetuate discrimination based on sex'. It urged States to introduce education and information programmes, which can help to eliminate prejudices and practices that hinder the social

6 See e.g. Lijnzaad 1994, pp. 51-57; Willems 1996, pp. 19-21; Oostland 2002, pp. 11-19; CEDAW GR 25 (2004), para. 6; for a practical model on the implementation of Art. 5 Women's Convention at the domestic level see Biholar 2013.

7 See § 11.11 for my analysis of the jurisprudence of the Committee on claims of violations of Art. 5 Women's Convention; see also Biholar 2013, pp. 21-56.

8 Holtmaat 2012, pp. 161-162.

9 CEDAW GR 25 (2004), para. 7.

10 Biholar 2013, pp. 55-56.

11 It concerns inter alia CEDAW GR 3, 12, 19, 25, 27, 28 and 29.

12 CEDAW GR 3 (1987).

equality of women. States are obliged to eradicate as far as possible gender stereotypes, which impede the implementation of Article 5 and thus also the implementation of the other obligations under the Convention. Education is seen as a main instrument for altering social and cultural patterns that maintain the subordinate position of women. However, the recommendation did not provide any concrete indications on the manner of implementation of the article at the domestic level.

General Recommendation no. 12¹³ made the first connection between the existence of gender stereotypes and violence against women. As a matter of fact, Article 5 Women's Convention was used to cover the problem of gender-based violence in all its aspects. States have been obliged since then to report periodically on matters regarding the protection of women against all types of violence. Attached to this recommendation is General Recommendation no. 19.¹⁴ The latter provided an extensive explanation on the matter of gender-based violence, and the link between gender-based violence and gender stereotypes was permanently established as a result. In General Recommendation no. 19 it was underlined that both traditional attitudes and practices on the inferiority and powerlessness of women and also harmful gender stereotypes perpetuate practices involving gender-based violence or coercion. As a matter of fact, gender-based violence helps to maintain women in their subordinate roles and denies them the enjoyment of their rights.¹⁵

With the recognition that biologically, socially and culturally constructed differences between the genders have to be taken into account for the realisation of substantive equality for women, differential treatment through temporary special measures became a reality. The issuing of General Recommendation no. 25 creates an obligation to effectuate social and cultural changes through these measures.¹⁶ One of the State's obligations is to act upon gender relations and 'the persistence of gender-based stereotypes that affect women' perpetuated by individuals and the law, legal and societal institutions.¹⁷ States were rightfully 'reminded that temporary special measures should be adopted to accelerate the modification and elimination of cultural practices and stereotypical attitudes and behaviour that discriminate against women or are disadvantageous to women.'¹⁸ With this, the importance of the effectuation of the rights under Article 5 Women's Convention, and under the entire Convention, becomes evident.

In General Recommendation no. 27 on the elimination of the discrimination suffered by elderly women¹⁹ this obligation surfaced again. The discrimination which these women experience is actually connected with the cultural and social imbedded mechanisms within a society on their position. These gender-based stereotypes have harmful consequences, particularly for disabled elderly women. State are therefore obliged 'to eradicate stereotypes and modify social and cultural patterns of conduct which are harmful for older women and to change the physical, financial, sexual, psychological and verbal abuse of these women based on gender stereotypes' through, inter alia, the introduction of legislation and the

13 CEDAW GR 12 (1989).

14 CEDAW GR19 (1992).

15 Ibid., para. 11.

16 CEDAW GR 25 (2004), paras. 8, 15.

17 Ibid., para. 7.

18 Ibid., para. 38.

19 CEDAW GR 27 (2010), paras. 11, 16.

undertaking of investigation, prosecution and punishment of perpetrators on the matter in institutional settings.²⁰

In General Recommendation no. 28 the connection is made between Article 5 and Article 2 Women's Convention, as the latter also upholds the obligation of the State to eliminate gender-stereotypes and gender roles.²¹ The Committee stated that, based on the concept of gender, men and women obtained social roles, which resulted in the differences between them. Their differential social positioning, determined by, inter alia, social and cultural factors, has to be altered by culture and society.²² In this context, I have to draw attention to Article 10 paragraph c Women's Convention which sets out the obligation for the elimination of gender stereotypes at all levels in the field of education and in all forms of education. This provision is an expansion of the obligation set out in Article 5 paragraph b Women's Convention, which considers the common responsibility of parents in the education of their children. Finally, General Recommendation no. 29 included a prohibition of gender-stereotypes in family law and policy.²³ Considering this obligation, I scrutinise some areas of family law in Curaçao on their gender (stereotypes) sensitiveness in Chapter 10.

§ 9.3 Culture, cultural identity and ethnicity

Considering that culture is the core element in Article 5 paragraph a Women's Convention, its meaning has to be clear if one wants to effectively introduce this provision in any particular context.²⁴ It is generally recognised that culture and cultural identity are very dynamic and fluid concepts. Culture defines the process through which a community is historically defined and it reflects the constant societal interaction, practices and beliefs among individuals and between individuals and the collectivity. It is the total sum of values, standards and ideas on social behaviour which are expressed by a group of people.²⁵ As stated by Merry 'Culture is the product of historical influences rather than evolutionary change. It is marked by hybridity and creolisation rather than uniformity or consistency.'²⁶ The institution of the family is the initial setting in which the individual is transformed into a cultural being, a subject of culture. So, following the observation of Maris in this sense, for the creation of responsible individuals based on the principles, standards, and values of the universal human rights, adequate cultural, political and social mechanisms have to be developed and put in place and by doing so we create an open cultural life.²⁷

The contemporary culture of Curaçao is the product of the creolisation process that took place in the nineteenth century, where the initial ethnic groups living under slave rules and (cultural) imperialism (un)consciously influenced each other and formed their own local culture and institutions. The society is denominated by many as a multi-cultural,

20 Ibid., paras. 36-37.

21 CEDAW GR 28 (2010), para. 9.

22 Ibid., para. 5.

23 CEDAW GR 29 (2013), para. 18.

24 For a detailed study in which a model is presented for the effectuation of Art. 5 Women's Convention at country level (Jamaica) for the eradication of gender-based violence, see Biholar 2013.

25 See e.g. Marks 1973, pp. 57-58; Römer 1998 (a), pp. 64-86; Allen e.a. 2003 (a), pp. 9-17; Allen 2006 (b), pp. 17-25; Merry 2010, pp. 40-43; Ansano 2012, pp. 55-67; Geschiere 2012, pp. 17-27; Biholar 2013, pp. 30-31.

26 Merry 2010, p. 42.

27 Maris 2006, pp. 27-38.

multi-ethnic,²⁸ multi-lingual and multi-religious society. Although the ethnic diversity is uncontested, the notion of multi-culturalism has been challenged.²⁹ According to Kibbelaar following Hall, the notion of multi-culturalism just disguises the unbalanced socio-economic realities and unequal power relations between the ethnic groups.³⁰

We are dealing here with a highly segregated³¹ society, regardless of the two cultural binding elements of '*Papiamentu*' and '*yu di Kòrsou*'.³² Differences rather than similarities are emphasised, an approach which strengthens inherent feelings of inferiority and (silent) resistance, powerlessness, internal and external negativity, exclusion, oppression, racism, negro-phobia, classicism and a culture of fear.³³ Accordingly, the Afro-segment of the population has a strong inclination towards (white) Western cultures, particularly Dutch culture, rather than towards the Afro-heritage which is seen as inferior. This racially-based binary category of black and white co-defines the ways in which the locals perceive and identify themselves and others.³⁴ Next to ethnicity and culture, the gender system also defines the identity of the Curaçaoan people. Ethnicity and gender are interconnected as they determine the identity and the opportunities which individuals receive.³⁵ All in all, inner and external obstacles and authoritarian (State) institutions and mechanisms hold the people back, including women, from further development and liberation. Therefore, the influence of institutions like religion, language and the family from a gender perspective is commented on in this chapter.

Bearing this in mind, a transformative approach directed at the modification of cultural and social patterns of conduct with the objective of changing harmful practices towards women as a distinct social group, as suggested by Article 5 paragraph a Women's Convention, the General Recommendations and the case-law of the Committee, may be helpful, as long as the State-Government as the duty-bearer and other actors are committed to and conscious of their obligations in this field.

§ 9.4 Women's centrality in the private domain

The concepts of matrifocality and patriarchy are central concepts which have to be dealt with. I have made a careful attempt to provide a description of the meaning and importance of these concepts for understanding the functioning of gender relations and gender stereotypes within contemporary Curaçaoan society. Firstly, the concept of 'matrifocality', or women's centrality, relates to the family as a social construct where the mother, i.e. the female, is the central figure. Most decisions and actions within the family setting are taken

28 For an extensive study on the identity of the ethnic groups in Curaçao see van der Dijs 2011.

29 See e.g. Römer 1998 (a), pp. 64-86; Nair 2005, pp. 236-242; Ansano 2012, pp. 55-64; Girigori 2012, pp. 77-82; for a reminder of the processes see Chapter 2.

30 Kibbelaar 2005, p. 37.

31 Marcha denominates the Curaçao society, contrary to Hoetink, as a fragmented society rather than a segmented society. Marcha & Verweel 2000; for the definition of the concept 'segmented society' see Palm (red.) 1985, p. 428.

32 See e.g. Römer 1974, pp. 49-60; Römer 1979; Reinders 1990; Marcha & Verweel 2000; Marcha 2003 (a), p. 180; Allen 2012, pp. 29-42.

33 Marcha 2003 (b), pp. 61-71.

34 See e.g. Cuales 1987, p. 12; Römer 1990; Rosalia 1997; Marcha 2003 (a); Rodriguez 2003; Allen (b) 2003; Streefkerk 2003, pp. 48-50; Nair 2005, pp. 238-239; Henriquez 2006; Girigori 2012.

35 Kibbelaar 2003, pp. 187-191; Kibbelaar 2005, pp. 49-52.

by or revolve around this figure. Under no circumstances must this concept be confused with matriarchy.³⁶ Patriarchy on the other hand is a family structure where the father is the ultimate authority and the decision-making revolves around him. This broader concept implies that the male is the ultimate ruler and decision-maker in society and that the female is entirely subordinate to him.³⁷

§ 9.4.1 *Women's centrality in Caribbean societies and family structures*

The proper functioning of the family is of great significance for social cohesion and for the definition of gender relations and gender roles. Every region and/or country has its own perceptions on the family construct, what it should be or consist of. These perceptions are defined by the historical time period.³⁸ In general, the definitions of the family construct indicate a social space where the private and the public spheres interact; they fulfil numerous social functions. The idealised Western image of the family upholding the urban civil definition of the family denied and neglected other family structures for a long time. Due to the growing number of divorces and the unmarried cohabitation of life partners this idealised image crumbled.³⁹ Currently, several family types, including the various family structures known in the Caribbean region, including Curaçao,⁴⁰ are recognised.⁴¹

Many households in this region have a woman as the head of the family.⁴² As noted by Barrow, the Caribbean social-gender system is built on an insecure and ambivalent foundation. The system is a result of the slavery past, colonialism, imperialism and racism which, in their turn, imposed the ideology of masculinity and femininity. The socio-economic infrastructures needed to support a male-dominated system are not effectively present.⁴³ The support and solidarity of the female as the responsible adult for the next of kin is characteristic. The family construct is women-centred within a patriarchal dominant structure. While the black or coloured female plays a prominent role in the family in particular and in social life in general, the male tries to preserve the Western-oriented and patriarchal family structure. However, in this process he faces many socio-economic limitations in a racially based and imperialistic society. By attempting to preserve the Western family structure, the male tries to maintain an ideology of masculinity which initially was not his, but which he adopted and internalised through socialisation processes.⁴⁴

Some authors consider the origin of women's centrality in the household to lie in the slavery past of the region, while others see it in the West African cultural heritage, and

36 Matriarchy is the system where the female functions as the ultimate ruler and possessor of the economic, political and social powers and not the male.

37 See e.g. Coole 1988, pp. 259-264; Henriquez 2006, pp. 43-58; Collins 2009, p. 58.

38 For a detailed study on the historical background of cohabitation and marriage in the former Netherlands Antilles, i.e. Curaçao see Abraham-van der Mark 1973; see also Paula 1992, pp. 11-22.

39 Römer 1993, pp. 12-13.

40 Contrary to most authors, Berkel gives another denomination for the family patterns seen in Curaçaoan society. He divides the family structures into inter alia 'close families' and 'open families'. Berkel 1966, pp. 16-20.

41 Henriquez 2006, pp. 43-58.

42 '*Vrouwen van de Nederlandse Antillen: naar een betere toekomst*', de Universiteit van de Nederlandse Antillen/ Ministerie Binnenlandse Zaken en Koninkrijksrelatie (deel 1)), Curaçao, March 2010, p. 17.

43 Barrow 1998, pp. xiii-xx.

44 For a discussion on these processes see Chapter 2.

yet another group finds an explanation in socio-economic realities.⁴⁵ In sum, the women centred household is no longer a deviant family type. It is merely a (behavioural) response to the socio-economic situation of the lower classes in society, although it manifests itself in all social classes.⁴⁶ This conclusion correlates with the elaboration given by Morrissey on the matter.⁴⁷

§ 9.4.2 *Family structures in contemporary Curaçao*

The contemporary female-headed household is not entirely equivalent to the women centred household structure.⁴⁸ Women's centrality in the household can be present in both extended and female-headed family structures. Characteristics of the female-headed family construct are firstly the strong position of the female in the family scene, secondly a migratory or marginalised male and thirdly the presence of illegitimate children.⁴⁹ It must be clear though that the male migratory behaviour so characteristic among lower and middle class men was copied from upper class men.⁵⁰ Morrissey remarks that, regardless of his attitude, the contribution of the male remains undeniable. Even in the case of total absence of the father, male authority as the authority figure in the patriarchal family pattern is idealised.⁵¹

The female-headed family is prominent in Curaçao as, by 2011, 44% of all households qualified as such.⁵² In comparison with other Caribbean islands, Curaçao has in the past registered a lower percentage of female-headed families due to a higher percentage of conventional marriages. Yet, a high number of divorces registered recently have resulted in (in)voluntarily female-headed families.⁵³ Those households which are female-headed by choice must not be overlooked either; some women do choose to raise their children by themselves. According to Cuales, studies have shown that these women have chosen this lifestyle, due to negative experiences with irresponsible male partners.⁵⁴ In female same-sex relationships women are also entirely responsible for the upbringing of the children. These

45 See e.g. Van Ooyen 1988, pp. 16-17; Morrissey 1998, pp. 78-91; Romer 1998, pp. 88-92; 'Vrouwen van de Nederlandse Antillen: naar een betere toekomst', de Universiteit van de Nederlandse Antillen/ Ministerie Binnenlandse Zaken en Koninkrijksrelatie (deel 1)), Curaçao, March 2010, pp. 17-23.

46 'Vrouwen van de Nederlandse Antillen: naar een betere toekomst', de Universiteit van de Nederlandse Antillen/ Ministerie Binnenlandse Zaken en Koninkrijksrelatie (deel 1)), Curaçao, March 2010, pp. 21-22; see also Henriquez 2006, pp. 43-58; Collins 2009.

47 Morrissey 1998, pp. 78-90.

48 'Vrouwen van de Nederlandse Antillen: naar een betere toekomst', de Universiteit van de Nederlandse Antillen/ Ministerie Binnenlandse Zaken en Koninkrijksrelatie (deel 1)), Curaçao, March 2010, p. 19; Morrissey 1998, pp. 78-90.

49 See e.g. Abraham-van der Mark 1973; Marks 1973; Römer 1993, p. 13.

50 In the 1950s, Hoetink had already extensively described the dissolute sexual relations of men with numerous women, which often result in many illegitimate children; behaviour which is socially and culturally accepted to a great extent. For more information see Chapter 2.

51 Morrissey 1998, pp. 78-83; van Ooyen 1988, pp. 14-15.

52 The percentage of female-headed households has been growing since 1992. In 2001 39.6 % of all households in Curaçao were female-headed. By 2011, this had risen to 44%. 'Eerste resultaten census Curaçao' (Central Bureau of Statistics (CBS)), Willemstad 31 juli 2012, p. 15; visit www.cbs.cw, last visited on 19 April 2015.

53 In 2011, of the 100 marriages, 46.1 ended up in a divorce. 'Statistical Yearbook Curaçao 2011' (Central Bureau of Statistics Curaçao), Willemstad December 2012, p. 38.

54 Cuales 1998, pp. 93-94; Marcha, Verweel & Werkman 2011.

relationships are, in many cases, the (in)direct results of negative experiences with men as well.⁵⁵

The nuclear family on the other hand exists *de jure*, but not *de facto*. The extended family, as the most dominant and common model, provides security and cohesion within and outside the nuclear family structure. As a matter of fact, the majority of extended families are women centred. In recent years, the support provided by this family structure has been negatively affected due to an (un)conscious transformative process related to socio-cultural, economic and educational changes.⁵⁶

§ 9.5 Stereotypes and stigmas in general

Stereotypes and stigmas are visible in all social areas in Curaçao. They influence and transform the life of individuals. For instance, the stereotypes that exist in the political and social areas within the Kingdom have had a negative influence on proper communication, relationships and cooperation within the Kingdom.⁵⁷ Stereotypes and stigmas are transferred through socialising processes that take place in the family, the educational system and the media. These ideas and views are formed and transformed by personal and historical experiences. Actually, the creation of stereotypes is deeply connected with the socio-cultural, economic and demographic context in which an individual is brought up. A person uses the views and ideas that are compatible with that of his or her own social group.

Simply put, stereotypes and stigmas are simplified, general views and ideas on other social groups. They are frames which give meaning to opinion, behaviour and words. Ironically, they also provide information on the way in which members of a social group view themselves.⁵⁸ The two factors which form and give content to stereotypes are language and socio-cultural processes.⁵⁹

§ 9.5.1 Gender stereotypes and gender relations

It was anticipated that the diversity of races and nationalities with different cultural patterns would socially and culturally influence gender relations. Moreover, gender constructs in the Curaçaoan society evolve in a system of aggression, institutionalised violence, lack of communication, lack of resources for the female, the male perception of ownership of women and a lack of mutual, emotional and economic support, all stemming more or less

55 There still exists (religiously-based) homophobia in Curaçao. My impression is, though, that same-sex relationships among women are more tolerated than those among men. I did not, however, encounter any local socio-cultural and historical scientific research exclusively dedicated to homosexuality and homophobia, which could affirm or disprove this impression. In 1994 the same-sex foundation 'Fundashon Orguyo Kòrsou' (FOKO) initiated the publication of the magazine 'Mare Bomba', which led to an awareness of homosexuality in the Leeward Islands, but it cancelled the publication in 1995. See e.g. Fundashon Orguyo Kòrsou (FOKO), 'Mare Bomba Boletin guie pa Kòrsou, Aruba I Boneiru', Nov. 1994 (1st ed.) - Oct./Nov. 1995 (6th ed.); see also daily newspaper 'Amigoe', 2 February 2001, p. 2; daily newspaper 'Amigoe', 3 June 2004; daily newspaper 'Antilliaans Dagblad', 2 December 2010, p. 16; FOKO 2012, pp. 14-17.

56 See e.g. Marks 1978, pp. 62-70; Bischof 1986; Bischof 1987; Van Ooyen 1988, pp. 10-17; Cuales 1994.

57 See e.g. Marcha & Verweel 2000; Marcha 2010; Kester & Hortensia 2012, pp. 417-430.

58 Allen 2003 (b), pp. 72-77; Marcha 2010, pp. 19-23.

59 In an early contribution he mentioned a third factor, which is the view (conception) on characteristics related to ethnicity. Marcha 2003, p. 54; Marcha 2010, pp. 19-23.

from the colonial period.⁶⁰ Regrettably, most of the observations made by Lannoy-Berg⁶¹ on the position of women in the 1970s are still valid. Not much significant progress and transformation has been accomplished in a social and cultural sense for the elimination of discrimination based on gender stereotypes in Curaçao, although Article 5 paragraph a Women's Convention and General Recommendation no. 25⁶² mandate this cultural and social transformation for the advancement of local women. It became evident to me that the Curaçaoan woman occupies a very adverse position in society. Her (social) role and position is determined by her virginity, '*desensia*',⁶³ subjugation and by her not challenging the 'old boy's network'.⁶⁴ Despite accomplishing better education locally and abroad, the women's position is co-determined by their marital status, having children, their skin colour and social class.⁶⁵

The perceptions which males and females have of each other were investigated by Marcha and Verweel.⁶⁶ It is well established that local men are known for their '*macho*'⁶⁷ attitude, which involves a preoccupation with their reputation, homophobia and having extramarital affairs; the last of which is not uncommon in many Western countries among middle and upper class men. This culturally and socially accepted male behaviour, while not tolerated from the female, was commented on by Van Ooyen in the late 1980s. This author already expected back then that the '*bysides*'⁶⁸ phenomenon would result in major social, economic, emotional and psychological problems for cohabitation, for the responsibilities of the spouses towards each other and their family and for society as a whole, which it did.⁶⁹

These patterns of conduct and many others led forcefully to a more independent attitude for women, particularly towards their spouses, and of feelings of abandonment and of being undervalued. The double morality of men and their liberal (sexual) behaviour in comparison to women is another factor.⁷⁰ Although the (lower and middle class non-white) male is very powerful in his relationships, he is powerless in other social actions and decision-making processes. In sum, male migratory and unfaithful behaviour became (in) directly the social and cultural norm and is intertwined with social and cultural processes and the style of upbringing.⁷¹

60 For an analysis of the gender system in a Jamaican context see Biholar 2013.

61 Lannoy-Berg 1976, pp. 8-10.

62 CEDAW GR 25 (2004), para. 7.

63 This means 'her respectability' [translation by A.R.].

64 Doran-Scoop 1997, p. 18; Kibbelaar 2005.

65 Lannoy-Berg 1976, pp. 8-10.

66 Marcha & Verweel 2005; Marcha & Verweel 2009.

67 The relationship between men and women is characterised by the Latin-American phenomenon of '*machismo*', which implies the superiority of men over women. A first assessment on gender roles and the implications of '*machismo/ marianismo*' and the responsibility of men and women in households was performed by the Dutch student, Temmink, as an assignment for the Women's Development Centre (SEDA) in 2005. This assessment, however, contains many flaws as it was conducted among groups of young people, mostly students, between the ages of 18 and 25. Most of the participants were too young to be in charge of a household. The author did not encounter a correlation between '*machismo*' and the inequality between the life-partners and in the household. Her conclusion was that this might be caused by the fact that Curaçaoan people are so accustomed to stereotypical gender roles that they are not even aware of the disparity it causes. Temmink 2005.

68 This means 'the mistress'.

69 Van Ooyen 1988, pp. 20-36.

70 See e.g. Lannoy-Berg 1976, pp. 8-10; Van Ooyen 1988, pp. 12-13; Marcha, Verweel & Werkman 2011.

71 Bishop 1986, pp. 6-18; Marcha & Verweel 2005, pp. 116-119.

The image of the female, on the other hand, is very wide-ranging and full of paradoxes. Women are seen as very strong and independent individuals, but at the same time they are very dependent on the behaviour of and marginalised by their spouses. Women's tolerant attitude undermines and disempowers their position in their relationships and in society. The Afro-Curaçaoan women as a racially identifiable group have on top of that a negative and low self-image, particularly towards white (Dutch) women and '*Latinas*'.⁷² The latter are often perceived as the husband-grabbing '*bysides*' of the local men. Moreover, local women are very preoccupied with their physical appearance, as it is highly valued by men, which strengthens the objectification of women.⁷³

In sum, the contemporary Curaçaoan woman is a complex being who is not really known, understood or supported by men or society. In my view there is no such thing as real emancipation, gender equality and advancement of local women. Evidently, for the accomplishment of real equality for women, several social processes and culturally accepted behaviours have to change. Article 5 paragraph a Women's Convention and the General Recommendations, particularly General Recommendations no. 25 and no. 28,⁷⁴ form an adequate framework in which this objective can be reached.

§ 9.5.2 *Influences of gender stereotypes in the upbringing of the new generation*

In Article 5 paragraph b Women's Convention, the State-Government of Curaçao received a mandate to ensure that family education includes an adequate comprehension of shared parental responsibilities in the upbringing and development of the male and female child, along with the State's obligation to change discriminatory cultural and social patterns of conduct. The societal and cultural environment in which children are brought up can determine whether or not they will turn into responsible, law-abiding individuals. Thus, the position and development of the female and the male is interconnected with the socio-cultural realities of their parents and other adults, and the economic, political and social relations within society.

In a contribution on the position of children in society, Allen⁷⁵ confirmed this. Slavery, cultural imperialism and socialisation processes and their consequences provided the foundation for the way in which new generations are perceived. Children used to be brought up with strong discipline, which was even backed up with physical punishment that sometimes turned into severe forms of child abuse. Modern developments and liberalisation have altered these perceptions and the relation between the parents, particularly the mother, and the offspring. The world of local children, due to technology, the media and materialism, has changed. According to many adults this has led to a deterioration of values

72 '*Latinas*' are women from Spanish speaking countries, like Santo Domingo, Colombia, Venezuela, Ecuador and Peru, who migrated to Curaçao, mostly in search of a better economic future. These women are often stereotyped as prostitutes as some of them are (un)officially employed as sex-workers. Allen 2003 (b), pp. 86-87; van de Sloot 2011, p. 353.

73 Marcha & Verweel stated that 'The self-image [of Curaçaoan women] is low. At home the Curaçaoan woman is a subordinated queen, who allows the man to think that he is the boss; outside the home her appearance is of great importance and perhaps slow changes will be introduced herein in the future.' [translation by A.R.] Marcha & Verweel 2009, p. 142.

74 CEDAW GR 25 (2004); CEDAW GR 28 (2008).

75 Pieters Kwiers 2004 (b); Allen 2006 (a), pp. 44-51.

and standards concerning the upbringing of children. Yet, severe forms of (physical, sexual and psychological) child abuse, neglect and abandonment are still being revealed.⁷⁶

Another influential factor is the migration recorded during the last two decades. Firstly, the migration to the Netherlands by particularly young (single) mothers and their children which resulted in many (social) problems in the Netherlands has influenced the way local people perceive children, and secondly, the intra-regional migration which led to additional influences from foreign cultures and further cultural diversification.⁷⁷ Moreover, the more liberal Western lifestyle, which stimulates materialism, consumerism and individualism, is being adopted by the younger generation, without an adequate response or action by the community to prevent it. All in all, the notion of a deterioration of values and standards among the younger generation is seen by many people as the explanation for the challenges which youngsters are facing today.⁷⁸ This is the reason why there is constantly a yearning for the reintroduction of the 'old' ways of educating children, which implicitly means the maintenance of harmful perceptions and ideas on gender roles in the family and in society and also the maintenance of abuse.⁷⁹

The point is that gender stereotypes and gender-based inequality are class-based and transferred at an early stage. The commonality lies in the fact that in all social classes the female is taught to be an independent, responsible, self-supporting individual, while the male is not adequately prepared for his future role. The male is brought up with a false sense of self-reliance, a '*macho*' attitude and an exaggerated sense of liberty, while the female is educated with a sense of inferiority and with a disproportionate sense of responsibility.⁸⁰ The investigation on the underachievement of boys⁸¹ in the educational system confirmed many of these contradictions.⁸² Their underachievement and wrongful gender stereotypes inculcated from a young age lead to feelings of threat, impotence or being stripped of their masculinity among (young) males; a situation which results in them becoming more violent towards females, perpetuating and strengthening the sub-culture of violence. However, their feeling of being stripped of their masculinity stems from the colonial period and societal power relations. In fact, a disproportionate expression of violence among (young) men leads to them ending up in criminal circles, incarcerated or even dead. In conclusion, incorrect gender stereotypes are established from an early age in a child's life and influential factors remain, inter alia, the family (structure), the educational and the social environment.⁸³ Accordingly, the gender-based asymmetries stemming from these institutions affect the life of youngsters.

The role of the mass media cannot be dismissed either, as gender stereotypes in education are strengthened by the message portrayed in the media. The mass media start

76 'The situation of children and adolescents in Curaçao', United Nations Children's Funds (UNICEF) 2013, pp. 59-63.

77 See De Bruijn & Groot 2014; for more information on the '*Latino*' identity in Curaçao see van de Sloot 2011, pp. 345-356.

78 Pieters Kwiers 2004 (b); Allen 2006 (a), pp. 49-50.

79 For an assessment of the cultural differences in the education of children in Curaçao and in the Netherlands see Meijer 2006, pp. 15-22.

80 Pieter Kwiers 2004 (b).

81 Narain 2010, pp. 96-100.

82 This is examined further in § 9.7 that addresses gender in the educational system of Curaçao.

83 Narain 2006, pp. 61-68.

(un)consciously from ideas of inferiority of the female and the female as a sex symbol which leads to the objectification of local women.⁸⁴

§ 9.6 Religion, (gender) stereotypes and language

The presence of the Roman Catholic Church in Curaçao is undeniable and prominent. Regardless of the diminishing of its influence since the 1970s related to the enactment of governmental social (welfare) policies, the establishment of new non-Catholic religious movements, the charismatic movement within the Catholic Church itself,⁸⁵ individualism and modernisation, the Afro-Curaçaoan section of the population remains the main upholder of the Catholic religion, as current figures show that 72.8% of the population is Catholic.⁸⁶

Controversies between Catholic doctrine and the social and cultural reality of the Afro-Curaçaoan population, particularly on issues such as gender relations, sexuality, marriage and family, are acknowledged.⁸⁷ The discriminatory rulings imposed by the Catholic Church on the family structure, gender roles and marriage persist. The antithesis between the rulings of the Catholic Church and the social reality of Afro-Curaçaoans are related to the power relations between these two social groups.

Despite all its attempts, the Church is failing to arrange family constructs and gender relations according to its own doctrines, which are based on the inferiority and obedience of women.⁸⁸ The values and standards of the Catholic Church co-determine in many ways the family lives of Afro-women though, as the Church was co-responsible for the relatively higher percentage of marriage through the higher value attached to the institution of marriage and to the Western nuclear family structure.⁸⁹ Above all, the female wants to upgrade herself and her offspring socially, and this is something that can be accomplished through marriage. However, the desired nuclear family structure often results in the extended family structure, due to the double standards in sexual morality, '*machismo*', high rate of divorces and the women's centrality in the family sphere.

Although religion remains a main source of support and comfort for the population, the population does not uphold and maintain the strict doctrine proclaimed by the Church. The feminisation in the church scene remains in place as the religiously-based socialisation process does not reach the men.⁹⁰ Participation in religion and Catholicism is currently the affair of the female and elderly.⁹¹ All in all, the authoritarian and patronising attitude of the

84 Pieters Kwiers 1994 (a), pp. 13-14, 24; '*Pensa Global, Aktua Lokal*': *Dos aña (1994-1995) "zorgcontract" Sentro pa Desaroyo di Hende Muhe (SEDA) ku Gobiernu Insular di Kòrsou I Programa 1996*' (no date), pp. 29-30, 35; Report of the regional seminar, '*Genderbewustwording en beeldvorming van de vrouw in de media*', Oranjestad-Aruba, 21-22 September 1996.

85 Bishop 1986; Henriquez 1991, pp. 103-108.

86 This shows a decrease in comparison with 2001, when 80.1% of the population was Catholic. '*Eerste resultaten census Curaçao*' (Central Bureau of Statistics (CBS)), Willemstad 31 juli 2012, p. 7.

87 Bishop 1986, pp. 1-5; see also § 2.7.

88 *Ibid.*, pp. 18-22.

89 For an extensive study on this matter see § 2.7.

90 '*Vrouwen van de Nederlandse Antillen: naar een betere toekomst*', de Universiteit van de Nederlandse Antillen/ Ministerie Binnenlandse Zaken en Koninkrijksrelatie (deel 1)), Curaçao, March 2010, pp. 61-64; Bishop 1987, pp. 80-100.

91 For the influence of religion in the lives of local women see Rupert 1994; '*Vrouwen van de Nederlandse Antillen: naar een betere toekomst*', de Universiteit van de Nederlandse Antillen/ Ministerie Binnenlandse

Catholic Church influences the relationship between this institution and its followers. The Church still discriminates against certain cohabitations and against certain of its followers such as homosexuals and it has strong objections to, inter alia, same-sex marriages and abortion.⁹²

§ 9.6.1 *Religiously-based education of the new generations*

Education in Curaçao is mainly religiously oriented.⁹³ The Catholic Church, through its Central School board,⁹⁴ is the main authority responsible for the education of the majority of the population at primary and secondary level.⁹⁵ With this mechanism the doctrine of the Catholic Church is transferred to the younger generations and thus religiously-based stereotypes and gender roles are secured, particularly in sexuality matters.⁹⁶ The contrast between reality and the religious approach on this topic is evident, as the younger generation has a more liberal attitude towards its sexuality.⁹⁷

Another factor which affected the religiously-based socialisation process was the language. The imposition of the Dutch language introduced by Dutch clergymen affected the school results of many children, the overall perceptions and identity of the Afro-Curaçaoan part of the population and their comprehension of the legal order for many generations.⁹⁸ Although since 2007 '*Papiamentu*'⁹⁹ is an officially recognised¹⁰⁰ language and its importance has increased, the superiority and supremacy of the Dutch language remains in place and unchallenged.¹⁰¹

There are also Protestant-based educational institutes. These institutions have a Dutch oriented foundation, where the education revolves around Western, i.e. Dutch, culture and the Dutch language. A smaller group of youngsters attends these schools, although an increase in numbers has been registered.

Zaken en Koninkrijksrelatie (deel 1)), Curaçao, March 2010, pp. 42-44.

92 Bishop 1987, pp. 102-120.

93 There are also public schools which are not religiously based, but they are in the minority. The other religiously-based schools also depart from Christianity and religiously-based educational patterns.

94 Curaçao has seven school boards, which are the Roman Catholic Central School board (RKCS), the Protestant Christian School board (VPCO), the Public School board (DOS), the Seven Days Adventist School board (ADV), the Foundation Christian Education New Song School board (SCONS), the Foundation Humanistic School board (SKAI) and the '*Evangelisch Broedergemeente* (EBG)'.

95 The Roman Catholic Central School board (RKCS) receives annually substantial financial support for its activities from the Executive. It has the majority of schools under its supervision.

96 '*Vrouwen van de Nederlandse Antillen: naar een betere toekomst*', de Universiteit van de Nederlandse Antillen/ Ministerie Binnenlandse Zaken en Koninkrijksrelatie (deel 1)), Curaçao, March 2010, pp. 61-64.

97 Pieters Kwiers 2004 (b), pp. 3, 7.

98 Kocken 2004, pp. 65-72.

99 '*Papiamentu*' is the language spoken by the majority of the population of Curaçao. Almost 80% have it as their mother language. '*Eerste resultaten census Curaçao*' (Central Bureau of Statistics (CBS)), Willemstad 31 juli 2012.

100 '*Papiamentu*' was first introduced as a subject in primary schools in the late 1980s. See Smeulders 1987; In anticipation of its formal introduction as an official language many school boards introduced '*Papiamentu*' in the late 1990s. By 2007 the law was adopted by which '*Papiamentu*', alongside Dutch and English, became an official language. See Art. 2 National Ordinance on official languages (P.B. 2007, no. 20).

101 Many people regard the Dutch language to be important. It is considered a necessity for the pursuit of further studies in the Netherlands by young people after their graduation. Bishop 1987, p. 12; Smeulders 1987; Kester 2011, pp. 25-36.

§ 9.6.2 ‘Papiamentu’: an identifiable cultural¹⁰² and educational marker

The impact of the language and the policy on the language of instruction in the educational sector is detrimental. They partly determine the future (school) career, development and consciousness of an individual. Seeing the confused situation of language and the language of instruction in the educational system at a local level, I have to categorise this as ‘linguistic schizophrenia’. The ‘general’ language policy is seriously deficient and at some educational levels it is even absent.

For instance, up until 2006 Dutch was the only official language and it was used in the formal educational domain together with Dutch teaching methods. These methods were used, despite the fact that ‘Papiamentu’ became in 2001 the language of instruction¹⁰³ at primary level, and applied by most schools, with the exception of the Protestant-based schools.¹⁰⁴ However, since the ‘*Papiamentu als instructie taal in het onderwijs*’ case of 1999 bilingual education in Dutch and Papiamentu is officially permitted.¹⁰⁵ As a result of the pitfalls¹⁰⁶ confronted with ‘Papiamentu’, the School boards removed the obligation for their schools to teach in ‘Papiamentu’, particularly after the enforcement of the law on the three official languages in the former Netherlands Antilles in 2008.¹⁰⁷ The old situation of the discrepancy between the mother tongue and a ‘foreign’ language has been re-established in many primary schools, as they are teaching in the first years at primary level in ‘Papiamentu’ and then they switch into Dutch. The schools are using mainly old Dutch teaching methods and materials. The recognition of ‘Papiamentu’ as an official language, a cultural identity marker for the ‘*yu di Kòrsou*’, was the result of a struggle¹⁰⁸ that is still ongoing.

At the secondary level the discrepancies in the language of instruction and the usage of Dutch educational materials were maintained, particularly at the senior high schools as these schools deliver future students who pursue academic studies in the Netherlands or elsewhere. Those students attending special¹⁰⁹ and preparatory secondary vocational education¹¹⁰ are taught in ‘Papiamentu’ with mainly deficient Dutch teaching methods and materials. At the tertiary level, the language of instruction varies depending on the

102 For contributions on the importance of ‘Papiamentu’ as cultural identity marker see Smeulder 1987, pp. 278-288; Wiel 2011, pp. 39-50.

103 The only primary and secondary schools with ‘Papiamentu’ as the language of instruction since its introduction in 1987 was ‘*Skol (Avansa) Integra Humanista (SKAI)*’ (the Integral Humanistic (secondary) school) [translation by A.R.]; Kester 2011, pp. 25-26.

104 There are however two other schools with Dutch as language of instruction that are not protestant-based. These are the Vigdis Jockheer Mensing College (RKCS) and the Johan van Walbeek school (DOS). Meijer 2006, p. 14.

105 HR 9 July 1999, in: TAR-Jusiticia 2000, no. 1, pp. 42-45.

106 One of the pitfalls is the chronic shortage of adequate teaching materials.

107 Article 2 National Ordinance on official languages (P.B. 2007, no. 20) in conjunction with Art. 10 National ordinance ‘*Funderend Onderwijs*’ (P.B. 2008, no. 84).

108 For a historical and cultural investigation of this struggle, the position of ‘Papiamentu’ and the official introduction of this language as a subject at primary school level in 1986 see Smeulders 1987.

109 The special secondary education consists of the ‘*Arbeid Gericht Onderwijs*’ (AGO), ‘*Voortgezet Speciaal Onderwijs*’ (VSO) and ‘*Praktisch beroepsonderwijs*’ (PBO).

110 Consider e.g. the figures for the academic year 2007-2008; ‘*Eerste resultaten census Curaçao*’ (Central Bureau of Statistics (CBS)), Willemstad 31 juli 2012, p. 11.

programmes, the materials, the language the professor is proficient in, and the school system¹¹¹ the programme models.¹¹²

The situation of the language policy inside and outside the school system is worrying and it holds back the changes that have to take place in a societal, cultural and educational sense. The supremacy of the Dutch language is maintained in one way or the other, something which is related to many factors, such as the low self-image of the Afro-Curaçaoan population, the higher appreciation of this language as a superior Western language and the prospect of the pursuit of higher education in the Netherlands by young people and their parents. Despite its inferior status, '*Papiamentu*' remains a distinctive social and cultural marker for the identity and development of the locals, including women.

§ 9.7 Formal educational system as an influential factor on gender relations and stereotypes

The education of youngsters is not only dependent on the parents, but also on the formal educational system and society. The formal educational system is, as a matter of fact, one of the most influential factors in the socialisation process of a population and the persistence and handing on of prevailing gender relations, gender stereotypes and gender roles. Thus, it is not surprising that the Committee addressed the States' obligation on this issue.¹¹³ In research on this matter in the Caribbean, Bailey pointed out that it is commonly known and recognised that the educational system enhances several mechanisms and factors that produce asymmetrical results for social groups which is connected with social class, gender and ethnicity. These results are instrumental in the protection of the ruling system based on class and race to maintain the patriarchal social structures and gendered societies.¹¹⁴ The perceived gender-based asymmetries in the educational system are approached and explained in correlation with the approaches of the (white) feminist mainstream. Much research has been undertaken on the matter in the region at the secondary educational level and the findings have showed that educational and environmental factors operate in such a traditional manner that they produce typical personalities related to the views which society has on the genders; this, despite the fact that males and females show many similarities in areas like motivation and achievement. The gender stereotyped patterns were maintained in the curriculum and in the educational system as a whole.¹¹⁵

111 At the local university one encounters the Faculty of Law with programmes copied from the Netherlands. Its programmes and materials are entirely in Dutch. On the other hand there is the Faculty of Social Sciences and Economics which offers courses based on the US system or the Dutch system or a combination of both systems. The students are taught in English, Dutch and/or '*Papiamentu*'. At the Faculty of Engineering the instruction language is mainly '*Papiamentu*', while the materials are in Dutch. For a short contribution on the language challenges at the Faculty of Law see Heutger 2009, pp. 91-97.

112 By 2010 82% of the schools at primary level had a policy on this area, while at the senior (SBO) and the preparatory (VSBO) secondary vocational educational levels the figures were respectively only 50% and 29%. See the Parliamentary report of 24 November 2010, 2010/2011, 32 500IV, no. 5.

113 CEDAW GR 25 (2004), para. 7.

114 Bailey 1998, p. 208.

115 *Ibid.*, pp. 214-220.

In the Caribbean region females outperform males, particularly in higher education. In the former Netherlands Antilles an investigation of 2010¹¹⁶ confirmed¹¹⁷ that the growing problem of the underachievement of boys in the educational system was related to the characteristics of the pupil, and also to the social and the educational environment.¹¹⁸ In this region¹¹⁹ though, more emphasis is put on the social environmental factor as the main cause. Also, the behavioural differences between males and females are used as a reason for the registered asymmetries in the school system. The lack of male role models,¹²⁰ the deficient communication between parents and their children,¹²¹ and peer pressure, but not so much the feminisation of the educational system, are explanations for the underperformance of male students. There is strong criticism of the educational materials which maintained gender-based stereotypes and patterns. The gender differences which favour the advantages of the female are accomplished early on through upbringing, educational materials and the culture in the school system at local level.¹²²

So, the plea for the alteration of patterns of conduct beginning from gender equality and future social roles by using the possibilities of cultural and social transformation as prescribed in Article 5 paragraph a Women's Convention is correct. However, despite the heavy burden and the necessity to break with negative patterns of conduct, mothers as rights holders do not admit, at least not openly, their necessity for the support of the father figure in the education and lives of their children. There is a sub-culture of denial and frustration, related to the effect of the absentee father on the children and the mothers in particular and on society in general.¹²³ This attitude undermines the claims of the female for support from the male, and the realisation of their rights under Article 5 paragraph b Women's Convention.

§ 9.7.1 Formal educational structure in general¹²⁴

Although Curaçao registers high levels of school participation, recent assessments note that the majority of the population possesses a disturbingly low educational level.¹²⁵ The total school participation rate in 2011 was 96.1%.¹²⁶ At the primary level¹²⁷ the difference

116 It was led by the national UNESCO commission, starting out from the goal of the eradication of gender inequality upheld in the UN Millennium Declaration (GA A/RES/55/2).

117 Narain 2010, pp. 23-28; de Alburquerque & Ruark 1998, pp. 1-13.

118 Cornelia-Isabella 2006, pp. 41-48.

119 The Millennium Development Goals were also specified for the Caribbean region. For an assessment of the status of the progress of the implementation of the goals in Curaçao (and Sint Maarten) between 2001 and 2010 see *'The First Millennium Development Goal report Curaçao and Sint Maarten 2011'*, The Governments of Curaçao and Sint Maarten in cooperation with the United Nations Development Program, January 2011.

120 See e.g. Pieters Kwiers 2004 (b); Henriquez 2006; Narain 2010; Marks 1973.

121 Pieter Kwiers 2004 (b), pp. 4-7.

122 Narain 2006, pp. 66-67; Narain 2010, pp. 54-80.

123 Narain 2010, pp. 101-102.

124 For a short assessment of the general situation on the rights of education of children in Curaçao see *'The situation of children and adolescents in Curaçao'*, United Nations Children's Funds (UNICEF) 2013, pp. 46-52, 77.

125 Ibid.; *'National Integrity System Assessment: Curaçao 2013'*, Transparency International (2013), p. 20.

126 *'Eerste resultaten census Curaçao'* (Central Bureau of Statistics (CBS)), Willemstad 31 juli 2012, p. 10.

127 This is called the *'Funderend Onderwijs'*, which consists of nursery and primary education (from 4 to 13 years of age).

between the genders is minimal.¹²⁸ This is not surprising as since 1991 school attendance has been mandatory for children between 4 and 18 years of age, in accordance with the National Ordinance on the Compulsory Education.¹²⁹ At the secondary educational level an increase has been registered in the attendance of children.¹³⁰ A significant increase was registered among youngsters of 16 years of age and older, as a result of the modernisation of the educational system in the early 2000s.¹³¹ The female is over-represented in all educational sectors at secondary level, with the exception of the special secondary vocational education. This is also the case at the tertiary level. At the national university, females form the majority of the students, i.e. graduates, in all faculties,¹³² with the exception of the Faculty of Engineering, although an increase in female students has been registered there as well.¹³³ Only a small percentage, 5%, is attending education at this level though. The limited programmes that are offered at academic level lead to the pursuit of further or advanced studies abroad, particularly in the Netherlands. This leads to a severe brain drain and constraints in the overall development of the island, as the majority of these youngsters do not return to their native island after finishing their studies.¹³⁴ The small group that does return has often adopted a more Westernised and liberal attitude and mindset that conflicts with the more conservative and backward patterns of conduct and customs of the local people. Although an increase in the establishment of private institutions at the academic level has been registered, concerns about the quality and high tuition fees still affect perceptions related to studying domestically.

A point of concern is also the high percentage of dropouts and pushouts. The majority of these youngsters are male, while premature termination of education by females is not uncommon either.¹³⁵ Reasons for females dropping out of regular school relate to (in) voluntary pregnancies, poor financial situations and behavioural problems among other

128 The school participation is at 98.9%. See overview in 'Eerste resultaten census Curaçao' (Central Bureau of Statistics (CBS)), Willemstad 31 juli 2012, p. 11.

129 In 1991 the National Ordinance on the Compulsory education was introduced in the former Netherlands Antilles which upheld an obligation of youngsters up until 16 years of age to attend school (P.B. 1991, no. 85). In 2007 this law was adapted to raise the age limit to 18 years of age ((Art. I para. E (2)) P.B. 2007, no. 43).

130 This level includes the preparatory secondary vocational education (VSBO: 23.6%) and the Senior High education and the Senior secondary vocational education (HAVO, VWO and SBO: 15.6%). 'Eerste resultaten census Curaçao' (Central Bureau of Statistics (CBS)), Willemstad 31 juli 2012, p. 11.

131 In comparison with 2001 where 21.8% of youngsters between 16 to 24 years of age were attending school, by 2011 this was 37.2%. Ibid.

132 The University of Curaçao, previously the University of the Netherlands Antilles, has five faculties: the Faculty of Law, the Faculty of Engineering, the Faculty of Social Sciences and Economics, the Faculty of Arts and the Faculty of Social and Behavioural Sciences. www.uoc.cw, last visited on 30 May 2014. According to Art. 27 National Ordinance of the University of the Netherlands Antilles it may establish a Faculty of Medicine. As of May 2014 this faculty is not operational. The National Ordinance of the University of the Netherlands Antilles of 12 January 1979, as adapted (P.B. 1979, no. 27).

133 For instance in the year 2011 there were 226 graduates, of whom 57 were male and 169 were female. Figures on the graduates of the University of Curaçao, on www.cbs.cw.

134 The success rate is very low. See Jaarverslag 'Stichting Studiefinanciering Curaçao' 2009, 'Meegroeien met País Kòrsou', Curaçao April 2010.

135 See the figures included in CEDAW/C/NLD/4/Add.2, pp. 41-47.

things.¹³⁶ The educational reforms of 2002¹³⁷ did not bring many alterations in these situations.¹³⁸ The raising of the age of compulsory education from 16 to 18 years was just a way to disguise the reality of the lack of prospects and chances and opportunities in the labour market¹³⁹ for young people.¹⁴⁰ Currently, many youngsters end up in work-study programmes and/or on welfare, or they simply remain without any prospects. The mismatch between educational preparation and the needs of the labour market and the overall quality and level of education are affairs of great concern.

Many factors can account for the failure of the educational reforms.¹⁴¹ So, urgent action guaranteeing the progress accomplished thus far and the success of the programme related to the weak points was rightly suggested.¹⁴² Yet, as of today not many effective improvements benefiting the performances of students have been achieved. In a following subsection the possible shortcomings regarding (adult) vocational training in relation to the educational development of women as mandated in Article 5 paragraph b Women's Convention in correlation with Article 10 paragraph c Women's Convention, is commented on.

§ 9.7.2 Vocational training: the Compulsory Youth Training Programme

The high rate of dropouts and pushouts¹⁴³ as a result of the inadequate Dutch-oriented school methods, the (foreign) language(s) of instruction, the characteristics of the pupils, deficient educational methods and materials, the socio-economic and educational environment and also the ineffective supervision of the law on the compulsory education age, had to be addressed by the federal Executive at a certain point. The introduction of a (legal) measure tackling this problem by the federal Executive is interesting, as it provided additional insights

136 Narain 2010, pp. 82-85; 'Jong & Moeder: een inventariserend onderzoek naar de situatie van tienermoeders op de Nederlandse Antillen' (Federatie Antilliaanse Jeugdzorg (FAJ) in samenwerking met SIFMA in opdracht van Samenwerkende Fondsen Aruba en Nederlandse Antillen), Curaçao/ Sint Maarten September 2010.

137 For the content of the reforms see 'Programma Onderwijssamenwerking Nederland – Nederlandse Antillen', Departement van Onderwijs Nederlandse Antillen, Willemstad, 1 December 2001, on www.usona.cw, last visited on 15 April 2015.

138 At the secondary level are (a) preparatory vocational education (VSBO), (b) senior secondary education (HAVO) and (c) pre-university education (VWO). The last two form the senior high schools. The VSBO is formed by the former pre-vocational education (BVO), junior secondary technical education (LTO) and junior general education (MAVO). There is also senior vocational education (SBO). These reforms were made possible through substantial financial and technical support from the Netherlands through the Education and Youth partnership programme of 2002-2006 (OJSP).

139 In comparison with 2009 the percentage of youth unemployment remained the same in 2011 (24.7%). Although the rate of youth unemployment is 2.5% of the total unemployment rate it is high according to international standards. By 2013 it went up to 37%. 'Resultaten Arbeidskrachtenonderzoek (AKO) Curaçao 2011' (Central Bureau of Statistics (CBS)), 18 September 2012, p. 15; 'Resultaten Arbeidskrachtenonderzoek (AKO) Curaçao 2013' (Central Bureau of Statistics (CBS)), 2 December 2013, p. 15; see also overviews on www.cbs.cw; daily newspaper 'Amigoe', 5 May 2014, p. 2.

140 The rate in 2006 was 37.8%. 'Statistical Yearbook Curaçao 2011' (Central Bureau of Statistics Curaçao), Willemstad December 2012, p. 29.

141 For an extensive appraisal of the situation of educational reforms in Curaçao and Sint Maarten see 'Onderwijs en Jongeren samenwerkingsprogramma: Onderzoeksrapportage Midterm evaluatie OJSP 2008-2012 Curaçao en Sint Maarten' (Andersson Elfiers Felix), Utrecht, 18 March 2011, GB123/003/Onderzoeksrapportage.

142 Ibid.; 'Onderwijs en Jongeren samenwerkingsprogramma: Kernrapport midterm evaluatie OJSP 2008-2012 op Curaçao en Sint Maarten' (Andersson Elfiers Felix), Utrecht, 18 March 2011, GB123/001c kernrapportojsp, pp. 21-24.

143 Martis 2003, p. 234; George e.a. 2003, pp. 52-55; 'The First Millennium Development Goal report Curaçao and Sint Maarten 2011', p. 30.

into the socio-economic realities and the part of the educational system that influences the further development of a specific group of youngsters in general and the creation of proper educational opportunities for (young) women in particular. Overall, many people have overlooked the fact that the obligation that the federal Executive had in this regard was partly determined by Article 10 paragraph c Women's Convention in correlation with Article 5 paragraph b Women's Convention and the associated General Recommendations.

The introduction of the special programme, the Compulsory Youth Training Programme, in 2006¹⁴⁴ was not just a response to the issue of prospectless (male) youngsters¹⁴⁵ locally, but also to the social problems they created when migrating to the Netherlands.¹⁴⁶ The objective of the programme is to give teenagers and young adults between the ages of 16 and 24 years of age a second chance to complete a basic education and provide them with sufficient qualifications for their participation and inclusion in the labour market and in society.¹⁴⁷ This measure was a last resort for many young adults, who no longer had an obligation to attend school, to achieve some kind of preparation and social skills, and was a way to reduce the negative effects¹⁴⁸ of school dropouts and the lack of proper (family) guidance. Obligatory work-study courses for the duration of six months to two years were offered.¹⁴⁹ As most of the candidates were young females, I have paid more attention below on its implications in general and on its significance for the further development of young women for their inclusion in society.

Personal factors, together with the problems encountered in its execution and its finances, did not lead to an overall success of the programme. Meijer had warned even in 2006 about the many pitfalls connected with its execution, after it became mandatory.¹⁵⁰ Many people do agree that the Compulsory Youth Training Programme is a last opportunity for many young people and they have acknowledged the necessity of the success of the respective programmes. Others have just assumed that the programme was a success for troublesome young people and their participation in society. So, only superficial attention was paid to its execution and its (legal and financial) framework,¹⁵¹ and not to its effectiveness and societal impact and on the advancement of young people, particularly young women.

144 The National Ordinance on the Compulsory Youth Training Programme of 7 July 2005, as adapted (P.B. 2005, no. 72). This ordinance came into force in 2006 (P.B. 2006, no. 26).

145 This programme was a separate educational programme of the former Netherlands Antilles and the Netherlands set up to address the severe problem of unskilled young people. The Netherlands contributed € 19 million in the period 2006-2011. It was already then acknowledged that these financial means were not sufficient. Nonetheless, the work-study courses started. USONA is the institution in charge of the allocation and supervision of the funds for the Netherlands. For more details on this organisation see Chapter 8.

146 Meijer conducted an investigation into the contribution of the studies 'Culturele Maatschappelijke Vorming (CMV)' (= cultural and social education) of the Compulsory Youth Training Programme in 2006. Meijer 2006.

147 Articles 1 and 2 National Ordinance Compulsory Youth Training Programme.

148 One of the effects was the high rate of youth delinquency. For more details on youth delinquency and youth detention see Marchena-Slot 2012.

149 Arts. 9-12 National Ordinance Compulsory Youth Training Programme. For more details on the guidelines, procedures, instruments for the execution of the programme see 'Handboek Sociale Vormingsplicht 'Kans op perspectief': Richtlijnen, procedures en instrument in de praktijk van alle dagen' (Directie Jeugd en Jongerenontwikkeling (DJJO)), November 2006; 'Handboek Sociale Vormingsplicht: Richtlijnen, procedure en instrumenten in de praktijk van alle dag' (Directie Jeugd- en Jongerenbeleid (DJJO)), August 2008, no. 2.

150 The enforcement of the law concerned was in 2006. Meijer 2006, pp. 25-35; consider also Klaver & Odé 2008, pp. 33-38.

151 See e.g. 'Aan de slag met sterke vrouwen in het Koninkrijk: onderzoek naar beleid en praktijk', De Universiteit van de Nederlandse Antillen/ Ministerie Binnenlandse Zaken en Koninkrijksrelatie (part 2), Curaçao, March

The programme has been evaluated on several occasions, but not on its gender-sensitiveness. Many shortcomings were pointed out,¹⁵² such as the lack of inclusion in regular education and the labour market after completing the programme and the high rate of premature termination¹⁵³ among the candidates. The hard core of unskilled youngsters with multiple socio-economic, behavioural and psychological problems, who are often male and who can end up in criminal circles, remained unreachable. When comparing the allocated funds and measures on the one hand, and the small number of participants who successfully finished their courses¹⁵⁴ on the other hand, the effectiveness, efficiency, impact and sustainability of the programme is questionable. Accordingly, many suggestions were made for the improvement of the programme, but the gender aspect was not addressed at all.¹⁵⁵ In sum, figures up until 2010 show that the outcome of the programme was very poor throughout the Netherlands Antilles. The programme¹⁵⁶ continued after 2010 as part of the Education and Youth partnership programme (OJSP)¹⁵⁷ between Curaçao¹⁵⁸ and the Netherlands.¹⁵⁹ In its plan of action of 2011¹⁶⁰ the Executive addressed the priorities for the remaining period of execution up until 2013.¹⁶¹ With a more preventive approach to the programme, the Executive wanted to maintain youngsters within the regular schooling system.¹⁶² As of 2014

2010; Marchena-Slot 2012, pp. 55-57.

- 152 It was evaluated in 2007, 2008 and 2009. See Annex to Parliamentary report II 2010/11, 32 500 IV, no. 5, '*Stand van zaken Sociale Vormingsplicht Nederlandse Antillen*', p. 3; Klaver & Odé 2008, p. 4; Maduro 2009.
- 153 For an overview of the results at the end of 2007 see Klaver & Odé 2008, pp. 47-53.
- 154 The costs per student were calculated at Naf. 20.000, excluding administrative overheads. Annex to the Parliamentary report of 24 November 2010, 2010/2011, 32 500IV, no. 5, '*Stand van zaken Sociale Vormingsplicht Nederlandse Antillen*', p. 6; Klaver & Odé 2008, pp. 38-44.
- 155 Klaver & Odé 2008, pp. 89-104; Maduro 2009, pp. 122-126.
- 156 For the period 2012-2013 the remaining financial means were to be used to secure the results achieved and the stipulation of priorities for the next five years. '*Onderwijs en Jongeren samenwerkingsprogramma: Kernrapport midterm evaluatie OJSP 2008-2012 op Curaçao en Sint Maarten*' (Andersson Elffers Felix), Utrecht, 18 March 2011, GB123/001c kernrapportojsp, pp. 3-5.
- 157 This document contains a deadline for the financial agreement, which was stipulated to be 30 September 2012 and the execution of the remaining programme on 30 September 2013, after a midterm evaluation in 2010. See '*Addendum op de afspraken betreffende het Onderwijs en Jongeren Samenwerkingsprogramma Curaçao – Nederlands 2008-2012*', Willemstad, Curaçao 7 December 2011, p. 21, available on www.usona.cw; Jaarverslag (U)SONA 2011, pp. 7, 20.
- 158 In this new agreement it was stipulated that Curaçao would contribute Naf. 30 million to the programme. However, these financial means were used for the support of improvements in the educational system. The contribution of the Netherlands terminated after 2012. Annex to Parliamentary report II 2010/11, 32 500 IV, no. 5, '*Stand van zaken Sociale Vormingsplicht Nederlandse Antillen*', p. 5.
- 159 Parliamentary report II 2010/11, 32 500 IV, no. 5.
- 160 The finalisation of educational reforms and the improvement within the educational system of the former Netherlands Antilles, i.e. Curaçao, was confirmed in this programme. Plan of Action '*Samenwerkingsprogramma Onderwijs en Jongeren Curaçao*', 7 December 2011.
- 161 Due to the constitutional reforms the entire Education and Youth partnership programme (OJSP) encountered delay. The objective remains, however, to reach the priorities set. The sustainability of the programme had to be guaranteed by 2012 and the costs of the programme were supposedly to be incorporated in the budget of the Ministry of Education, Science, Culture and Sport (OWCS). *Ibid.*, p. 4.
- 162 There were still Naf. 10.5 million available for the programme. After 2012 the Executive was to incorporate the execution of the entire programme in its annual budget. For a financial overview of the entire programme OJSP in Curaçao see *Ibid.*, pp. 18-21 and Annex B; see also daily newspaper '*Antilliaans Dagblad*', 29 December 2011, p. 2.

the Executive is continuing the programme; however, it is not clear under which additional implementation and monitoring mechanisms.¹⁶³

Although the gender aspect was not (properly) taken into account, an assessment of 2011¹⁶⁴ showed that the majority of the students were female; a significant percentage had children.¹⁶⁵ Moreover, most of the work-study courses reinforced the gender division that existed in the labour market and society. I did not encounter any other general and cohesive adult education programme or other educational policy for people over 25 years of age who lack proper education and training, nor is there a general adult educational programme solely directed to (young) women as prescribed in General Recommendation no. 25 and no. 27.¹⁶⁶ In sum, there is a great need for an effective government-funded vocational programme for females, as further training and education are key elements for the advancement and consciousness of women and elimination of gender stereotypes in society.

§ 9.8 Gender factor and stereotypes in the formal labour market

The labour market is characterised by its gender-based divisions,¹⁶⁷ disparity in wages, gender-based occupational exploitation and social and educational classifications. The advantage which the female has in the educational sense over the male did not transform itself into an overall better position for the former in the labour market. Despite the higher educational level of women, many authors¹⁶⁸ acknowledge the lower economical and social positions which women occupy in society. Although figures show that the majority of the active working population¹⁶⁹ and jobseekers¹⁷⁰ are women,¹⁷¹ the men occupy the better positions and earn higher wages.¹⁷² The disparity in wages exists in spite of the *de jure* principle of equal pay for equal work.¹⁷³ Occupational segregation, of which women's

163 'Regeerprogramma Curaçao 2013-2016, *Speransa I Konfiansa (Hoop en vertrouwen)*' (no date), p. 7. As of April 2014, I was unable to retrieve additional information on the status of the programme.

164 The same recommendations made in 2009 were presented in 2011. Welvaart 2012.

165 Welvaart 2012, pp. 10, 16.

166 CEDAW GR 25, para. 38; CEDAW GR 27 (2010), para. 40.

167 This division is more visible in the informal labour sector, where men perform the so-called 'jobs', which are temporary odd jobs that are done occasionally, such as jobs in construction. These 'jobs' are in general more lucrative than the informal labour performed by women, as domestics, street vendors or cooks. Kibbelaar 2005.

168 See e.g. Lannoy-Berg 1976; Narain 2010; Kibbelaar 2005; Marcha, Verweel & Werkman 2011.

169 In 2011: 32,341 females and 29,700 males and in 2013: 32,143 females and 31,350 males. 'Resultaten Arbeidskrachtenonderzoek (AKO) Curaçao 2011' (Central Bureau of Statistics (CBS), 18 September 2012, pp. 12-13; 'Resultaten Arbeidskrachtenonderzoek (AKO) Curaçao 2013' (Central Bureau of Statistics (CBS)), 2 December 2013, p. 11.

170 In 2011: 4,001 females and 2,721 males. In 2013: 5.841 females and 3.671 males. Ibid.

171 This was already the case in the former Netherlands Antilles. Ibid.; see also figures from the census of 2001 of the Central Bureau of Statistics (CBS), on www.cbs.cw, last visited on 19 April 2015; in 2013 is estimated that more than 3,000 people got laid-off, which led to a substantial increase in the unemployment rate. With the upcoming restructuring of the governmental sector in the course of 2014 and 2015, more jobs will be scrapped. These developments have adverse impacts on the socio-economic reality. For an overview of the lay-offs until in 2013, see 'Resultaten Arbeidskrachtenonderzoek (AKO) Curaçao 2013' (Central Bureau of Statistics (CBS)), 2 December 2013; see also daily newspaper 'Amigoe', 8 November 2013, p. 3; visit www.cbs.cw.

172 In only one category (Gross monthly income between Naf. 1,501-Naf. 3,000) do women earn more than men. Figures for 2011 and 2013 are available on www.cbs.cw; see also Kibbelaar 2005.

173 Only in the governmental sector is equality in payment achieved.

lower and unwaged labour¹⁷⁴ is a consequence, is inextricably linked with the way men and women are socially defined and perceived. Those jobs which are characterised as female are undervalued. Moreover, women are forced to participate on a full-time basis in the labour market, as part-time occupations do not provide enough to sustain a family, or they hold multiple (part-time) jobs.¹⁷⁵

A significant group of women still¹⁷⁶ do not have the right qualifications and/or proper education to participate adequately in the labour market. They are active as lower grade office clerks, retailers, shop and security personnel and in elementary occupations such as domestic servants and ‘sneks’¹⁷⁷ employees.¹⁷⁸ The earnings in these jobs are overall very low or beneath the mandatory minimum wage.¹⁷⁹

In spite of the labour law on working hours of 2000 in which the labour of domestic servants has been recognised and regulated to provide some protection to these women,¹⁸⁰ their work remains undervalued and unprotected. Furthermore, as a result of the liberalisation of the labour market, which led, inter alia, to the amendment of the National Ordinance Termination labour agreement of 1972 (*Ley di retiro*)¹⁸¹ in 2000 through the National Ordinance on the liberalisation of the labour law,¹⁸² many protection mechanisms were made flexible or eradicated altogether.¹⁸³

A significant number of women employed in the lower labour sectors are (il)legal migrants who do not have or receive the necessary (social and legal) protection. Many of them lack the basic labour skills which means that they are at the mercy of their employers. It is not uncommon that they perform (un)forced sexual favours for their male employers for additional (financial) benefits, a practice which is not unknown among local women either, stemming from the colonial period and based on the sexual superiority of the male. Next to these types of (un)forced prostitution, there is a group of foreign women who are legally active as sex-workers. In Curaçao prostitution is not illegal in government-controlled

174 In 2011 the amount of women earning Naf. 500 (around 200 Euro) or less per month outnumbered men. Also, in the category of gross income between Naf. 500 and Naf. 1,000 women outnumbered men. ‘*Statistical Yearbook Curaçao 2011*’ (Central Bureau of Statistics Curaçao), Willemstad December 2012, pp. 24-25.

175 Van Dijke & Terpstra 1987, pp. 13, 38-53; Kibbelaar 2003, p. 180; ‘*The First Millennium Development Goal report Curaçao and Sint Maarten 2011*’, The Governments of Curaçao and Sint Maarten in cooperation with the United Nations Development Program, January 2011, pp. 27-28 and 30.

176 For an assessment of the seriousness of the situation in the late 1980s and early 1990s see ‘*Na kamindat pa nos konose nos berdatnan*’, Programa anual di Sentro pa Desaroyo di Hende Muhe, 15 May 1991, pp. 38-43.

177 The ‘sneks’ are the local snack bars which sell food and drinks with usually music from Santo Domingo, often ‘bachata’, where many of the saleswomen are from. In many cases these activities are accompanied by illegal prostitution.

178 As the final results of the census have not been published yet, I have used the table of occupations divided between the genders of 2001 as incorporated in Kibbelaar 2005, p. 65.

179 Minimum wage per hour per 2011 was Naf. 7.53 in accordance with the National Ordinance Minimum wage of 1972 as adapted (P.B. 1972, no. 110). The wages domestic servants earned are often less than Naf. 800 per month as many of them do not work full time. The average wages of most of these occupations are less (Naf. 1,227 per month) than the poverty threshold of Naf. 2,195 (in 2008) and Naf. 2,550 (in 2013). Visit www.cbs.cw; ‘*Statistical Yearbook Curaçao 2011*’ (Central Bureau of Statistics Curaçao), Willemstad December 2012, pp. 24-25.

180 Article 25 Labour regulation 2000 (P.B. 2000, no. 67).

181 Also known as the Dismissal Act (*Ley di retiro*) of 31 May 1972, as adapted (P.B. 1972, no. 111).

182 The National Ordinance of 27 July 2000 (P.B. 2000, no. 86).

183 There is only one provision in the ordinance on the liberalisation of the labour law, which dealt with the position of women (Art. 1614pa). It stated that each stipulation within a contract which implies the automatic dismissal of an employee due to pregnancy or childbirth is null. Also, the provision which forbids the nullification of a labour contract due to marriage is herein incorporated. Kibbelaar 2003, pp. 178-180.

brothels where temporary permits are issued to foreign women to act as sex-workers. Yet, the island has female migrants who perform this kind of work without any permits. As a consequence of this, many female migrants, particularly 'Latinas', are (wrongly) stereotyped as prostitutes. Local women participate often out of necessity, secretly and illicitly, in this line of work as well. Both groups of sex-workers do not have any protection in labour laws and they are exposed to all kinds of dangers and diseases.¹⁸⁴

Highly educated women, in their turn, experience the phenomenon of the glass ceiling. The main factors impeding the proper acceding of women into decision-making positions are related to personal and socio-cultural characteristics. Kibbelaar showed¹⁸⁵ that, despite the fact that many women have reached higher educational levels, they still encounter obstacles and challenges in their careers. They are overrepresented in the educational, health and social sectors in comparison with other higher occupations, particularly in the technical and financial sectors, which are dominated by men. There are indefinite barriers that impede the upward movement of women into decision-making positions, in spite the fact that some of them were allowed to occupy leading positions in several organisations. These obstacles are based on ethnic or racial, religious, or gender considerations, while others are related to the culture within the organisation, the small scale of the community, the mentality, their responsibilities as carers and breadwinners. The author came to the conclusion that the gender-based perceptions and the existence of the glass ceiling through the interconnections between the different barriers within the labour market have to be transformed for the further advancement of women in society.¹⁸⁶ Many of these (middle class) well-educated women, preoccupied with their career and without the equal sharing of responsibility with their spouses in the household and the education of children, tend to transfer (part of) these responsibilities in the private domain to lower class women, who act as their domestic servants.

§ 9.8.1 *Consequences of the participation of women in the formal labour market*

Generally speaking, males earn higher incomes when participating in the (private) labour market and, consequently, they have more socio-economic influence than females, despite the fact that the educational differences men and women have been largely removed.¹⁸⁷ The (sole) responsibility of women in female-headed households and in the education of their children can result in their inability to cope with the financial burdens and emotional strains. Accordingly, lower class women suffer under conditions of (extreme) poverty. Figures show that a great proportion of female households live below the poverty line, as a significant percentage of females earn a gross monthly income lower than the poverty threshold.¹⁸⁸

184 See e.g. Martis 1999, pp. 201-215; Allen 2003 (b), pp. 85-87; Martis 2003, pp. 245-246; Frans-Schoop (no date); Van de Sloot 2011, pp. 352-353; De Bruijn & Groot 2014, pp. 25-26; Schutgens & Sillen 2014, p. 513.

185 Kibbelaar 2005, pp. 139-300.

186 Ibid., pp. 304-309; Kibbelaar 2003, pp. 189-199.

187 For the figures visit www.cbs.cw.

188 By 2011, 25.1% of the population lived below the poverty threshold. See daily newspaper 'Amigoe', 24 May 2014, p. 2; visit www.cbs.cw.

Other challenges are the lack of daycare for their children, the high costs related to childcare and the lack of equal labour conditions. The local legislature enacted in 1997¹⁸⁹ a law on the regulation of daily childcare for children between 0 and 4 years of age, but this legal measure is not sufficient to cope with the urgent need for proper and affordable childcare.¹⁹⁰ Moreover, not all working mothers are eligible for governmental subsidised childcare support either.¹⁹¹ The after-school care for children attending primary schools is partially subsidised by the Executive.¹⁹² These measures are, however, not sufficiently in place, available or affordable.

As a matter of fact, many working mothers rely on their informal family structure for support for their children. However, these structures have been crumbling, as many grandmothers and other female family members are also forced to participate in the labour market to provide for themselves and their own families. The lack of (structural) support leads to many children being left by themselves, and thus falling under bad influences that inevitably leads to social and behavioural problems among youngsters, particularly those of the lower social classes.¹⁹³ Another worrisome phenomenon is child labour, more specifically the participation of young children, particularly boys, in the informal labour market as a mean to assist their family with the financial burdens; this despite the fact that child labour is legally prohibited.¹⁹⁴ Their gains are used as additional income for their (single) mothers to cope with the financial burden in the family setting.

As noted by Kibbelaar, the neo-colonial hegemony determines the gender, ethnic and class hierarchies within contemporary Curaçaoan society. These hierarchies are expressed in the adverse position which the female has in the labour market, in the meaning of masculinity and femininity in the socio-cultural context and the importance of skin colour and ethnicity. Factors such as financial aid from the Netherlands, the (dis)functioning of the public sector, the organisational hierarchy in both the private and public sectors and the disparity in income, have determined and kept the imbalance between men and women in the labour market. Inadequate and insufficient childcare facilities and masculine organisation cultures have also contributed to this.¹⁹⁵

Finally, related to the issues of disparity in payment and discrimination against women in the labour market, I have to note that this issue was addressed on many occasions by the

189 The Island Ordinance on child daycare for children between 0 and 4 years of age (A.B. 1997, no. 98). This regulation is presently enforced as a national ordinance of Curaçao.

190 Information obtained from Mr R Doran (President *Stichting Coordinatie Centrum Kinder- & Jeugdopvang*), on 9 August 2012.

191 Only lower income mothers (less than Naf. 1,500 per month), i.e. parents (less than Naf. 2,000 per month), or (single) parents pursuing an education or participating in a work-study programme are eligible for subsidy. The '*Stichting Coordinatie Centrum Kinder- & Jeugdopvang Curaçao*' (SCKJ) is the foundation acting as the intermediary between the Executive and parents for the subsidy for childcare in recognised childcare facilities, pursuant to the regulation of childcare of 1997. It is in charge of the allocation of children to daycare institutions based on specific criteria. Brochure '*Stichting Coordinatie Centrum Kinder- & Jeugdopvang Curaçao*' (SCKJ).

192 One of the main NGOs which offers this service, subsidised by the Government, is the Foundation '*Desaroyo i Progresso*'. They received in 2010 an amount of Naf. 3.5 million for after-school activities. See Decision of the Insular Executive of Curaçao on subsidy for the Foundation '*Desaroyo I progresso*', 10 January 2010, no. 2009/23575/17691a.

193 Van Dijke & Terpstra 1987, pp. 63-79; Meijer 2006, pp. 12-13.

194 Child labour is legally prohibited. This means that children younger than 15, are not allowed to participate in the labour sector, following Art. 2 in conjunction with Art. 18 Labour regulation 2000.

195 Kibbelaar 2005, pp. 46-49.

European Committee of Social Rights.¹⁹⁶ This Committee concluded, inter alia, that 'the legal framework prohibiting discrimination based on sex in the labour sector is inadequate and there is a lack of measures to promote the employment of women.'

§ 9.8.2 *The new maternity leave regulations*

The new maternity leave regulations of 2012¹⁹⁷ contain provisions on the equality between men and women,¹⁹⁸ the health and security of mother and child, and the advancement of the position of pregnant women and motherhood in the labour sector based on international standards, including the Women's Convention. It took the legislature¹⁹⁹ many years to adapt the Civil Code (Book 7A) on the issue of maternity leave in which were regulated, inter alia, the extension²⁰⁰ of the period of pregnancy leave, and also aspects of the protection of pregnant women active in the labour market, such as the prohibition for pregnant women, 12 weeks prior to the due date, to work continuously on their feet for more than one hour,²⁰¹ for them to perform night work eight weeks prior to the date of childbirth,²⁰² and the prohibition on the employer terminating a labour agreement during pregnancy.²⁰³ In the private sector, protection and care of the (future) mother and child in the case of hospitalisation and sickness and death of the mother is ensured.²⁰⁴ The possibility of breastfeeding during working hours, in consultation with the employer and under adequate conditions and infrastructure,²⁰⁵ has also been created.²⁰⁶ Parental leave for both parents as an expression of the equal sharing of parental responsibility in accordance with Article 5 paragraph b Women's Convention was not made possible though. Although this Act symbolises major improvements, it is still not sufficient. It remains to be seen whether employers comply with this Act, as no explicit sanctions were incorporated in cases of non-compliance or violation.

196 Conclusions XVII of the European Committee of social rights, pp. 52-54; Conclusions of the European Committee of social rights of 2008, p. 47; Conclusions of the European Committee of social rights of 2012, p. 54-55, available on www.coe.int/t/dghl/monitoring/socialcharter/conclusions/ConclusionsYear_fr.asp.

197 The National Ordinance of 3 April 2012 on the adaptation of the Civil Code (Book 7A) (P.B. 2012, no. 24).

198 For a study on this aspect of the law see § 7.6.4.

199 The adaptation had actually already been suggested in 2007. Explanatory Memorandum of the adaptation of the Civil Code (Book 7A), 2009/2010, no. 3216.

200 Pregnancy leave with the maintenance of salary was prolonged from 12 weeks to at least 14 weeks, pursuant to Art. 1614ca para. 3 Civil Code.

201 Article 1614xa para. 2 Civil Code.

202 Article 1614xa para. 1 Civil Code.

203 Article 1614pa in conjunction with Art. 1615h para. 7 Civil Code. The dismissal of a female employee during pregnancy or maternity leave is only allowed when it is based on written justifiable and objective grounds which are in no sense related to the pregnancy, pursuant to Art. 1615h para. 8 Civil Code.

204 Article 1614ca paras. 4 and 5 Civil Code; see also the Advisory Board of Curaçao 2011, RvA no. RA/36-11-LV.

205 The first company which has recently introduced such conditions as a 'Lactation Room' for young professional mothers, is the Royal Bank of Canada (RBC) at its branch at 'Rooi Catoetje'. See daily newspaper 'Amigoe', 8 March 2013, p. 1.

206 Article 1614xa para. 3 Civil Code.

§ 9.8.3 Unemployment and welfare

The unemployment rate in 2011 was at 9.8%.²⁰⁷ By the end of 2013 it had increased to 13%.²⁰⁸ By 2011, more people were active in part-time occupations, and the presumption is that they end up in the informal sector, which does not provide the necessary (financial and social) security.²⁰⁹ The unemployed rate among women both in 2011 and 2013 was higher than that of men.²¹⁰ Inhabitants who are unemployed or who are unable to provide for their basic needs, are eligible to receive financial support through the welfare (social) benefits offered by the Executive.²¹¹ However, this support²¹² is at such a low level²¹³ that it does not cover the basic needs when the high costs of living are taken into account. There are no unemployment benefits either.

By 2011, 22,725 people were on welfare, the majority being female,²¹⁴ which makes the welfare system appear somewhat one-sided. These people are not allowed to work without notifying the governmental agency concerned and they have an obligation to cooperate in the search for a paying job or in following a work-study programme.²¹⁵ Despite the severe sanctions in cases of non-compliance, many people on welfare are active in the informal sector²¹⁶ gaining additional means to make ends meet to support their families.

As stated by Martis, although Curaçao²¹⁷ has a system of welfare, it does not have a structured social assistance programme. People who are on welfare often stay for a long

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- 207 The rate of the working population was 52.2%, which was low in comparison with other Caribbean countries. Results of the labour force survey Curaçao 2011, 18 September 2012.
- 208 See figures on www.cbs.cw, last visited on 15 April 2015.
- 209 The total number of persons with permanent work had declined by 2011 in comparison with the significant increase of the number of persons with temporary occupations. An increase of 84% among the latter group has been registered.
- 210 Female unemployment which in 2011 was at 11%, increased in 2013 to 15.4%. Male unemployment was at 8.4% (2011) and 10.5% (2013). Results of the labour force survey Curaçao 2011, 18 September 2012, pp. 13-15; figures are available on www.cbs.cw.
- 211 The Island's legislation on the rulings for welfare of 1971 (A.B. 1971, no. 11) was amended in 2009 (AB 2009, no. 135), introducing modern and stricter rulings. Provisions on financial support in the case of the pursuit of a work-study programme were incorporated. This was related to the enactment of the Compulsory Youth Training Programme of 2005.
- 212 They receive an allowance, together with free medical care, subsidies for house rents, school fees and sometimes also subsidies on utility services. See Art. 4 Island Ordinance on Welfare; for a background assessment of this support system until 1987 see Van Dijke & Terpstra 1987, pp. 22-25.
- 213 In 2012 a single person received Naf. 162.40 every two weeks, while the poverty threshold for single persons was stipulated at Naf. 1,190 (Sept. 2012). In the case of a single parent he or she also receives Naf. 162.40 and an additional fee of Naf. 21 per child, i.e. family member, every two weeks. Married couples get Naf. 281.10 every two weeks. Additional funds can be granted, if the income of a person is lower than the welfare standard. The maximum sum that can be granted is Naf. 320.47. Article 14 Island Ordinance on Welfare was adapted in 2012, which upheld the increase of the initial amounts of respectively Naf. 157.66 and Naf. 272.90. See the National Decree of 7 February 2012 (P.B. 2012, no. 12); Art. 19 Island Ordinance on Welfare; 'Statistical Yearbook Curaçao 2011' (Central Bureau of Statistics Curaçao), Willemstad December 2012, p. 33; figures are available on www.cbs.cw.
- 214 'Statistical Yearbook Curaçao 2011' (Central Bureau of Statistics Curaçao), Willemstad December 2012, p. 33.
- 215 If they do not comply herewith, they are sanctioned. See Arts. 6, 7 and 13 Island Ordinance on Welfare; for other grounds of suspension of welfare, such as drug and alcohol abuse, lack of responsibility, refusal to participate in a work-study programme, see Arts. 27 and 28 Island Ordinance on Welfare.
- 216 They are often employed as domestic servants, cooks, and street vendors. A substantial increase in this sector has been noticed in 2013. See 'Resultaten Arbeidskrachtenonderzoek (AKO) Curaçao 2011' (Central Bureau of Statistics (CBS)), 18 September 2012, p. 12; 'Resultaten Arbeidskrachtenonderzoek (AKO) Curaçao 2013' (Central Bureau of Statistics (CBS)), 2 December 2013, p. 12.
- 217 At that period of time she referred to the Netherlands Antilles. Martis 2003, p. 237.

period of time in the system without much prospect of work, as in many cases they lack the proper educational and labour skills. The island is not unique in this sense though. De Albuquerque and Ruark pointed out that women in the Caribbean have indeed made progress towards gender equality, but they are not there yet. It became obvious in the late 1990s that the Caribbean female outperformed women in more developed (industrialised) societies in their participation in the formal labour market.²¹⁸ Yet, their participation in society, despite their entrance into the labour force in greater numbers, is lower in comparison with men. Women are employed in the lower levels of the labour market and earn less than men, so they are more likely to be in poverty. The progress in education made by Caribbean women did not lead to them occupying powerful decision-making positions.²¹⁹ The Caribbean female has not accomplished real equality, despite the fact that she has overtaken, in many aspects, the male of the lower class. In the Curacao context, I can only confirm this observation.

§ 9.9 Single motherhood: teenage pregnancy

We also have the serious issue of teenage pregnancy, which constitutes a major impediment for the advancement of the female concerned. Article 5 paragraph b Women's Convention stipulates that the community should receive proper education and understanding on the issue of maternity as a social function and the shared responsibilities of parents after the birth of a child, from the State-Government as duty-bearer. In an ideal situation both genders as right-holders have equal responsibilities in the procreation and education of their offspring. However, many local females still consider motherhood, often without having received any proper guidance, as the main purpose of their existence. The state of maturity for maternity is not reached by many of them, as they become pregnant at a relatively young age.²²⁰ The relatively high percentage of teenage pregnancies²²¹ which, by 2011, stood at 10.3%,²²² is attributed to many factors, such as the lack of communication between parents and teenage girls, the attitude of parents towards sexuality,²²³ myths about sexuality and contraceptives and cultural issues like peer pressure, family construction, paradoxical educational patterns, unequal power relations, poverty, a lack of future prospects, and behavioural problems.²²⁴

218 Albuquerque & Ruark 1998, pp. 3-12.

219 Ibid., pp. 12-13.

220 For more details on the issue of single motherhood in Curaçao until 1987, see Van Dijke & Terpstra 1987.

221 The Caribbean region, including Curaçao, has one of the highest rates of teenage pregnancy. Pieters Kwiers 2004 (b); George e.a. 2003; *Jong & Moeder: een inventariserend onderzoek naar de situatie van tienermoeders op de Nederlandse Antillen* (Federatie Antilliaanse Jeugdzorg (FAJ) in samenwerking met SIFMA in opdracht van Samenwerkende Fondsen Aruba en Nederlandse Antillen), Curaçao/ Sint Maarten September 2010.

222 The figures extracted from research conducted on this subject in 2010 by FAJ/SIFMA, based on the census of 2001, showed that 7.3% of all teenage girls became pregnant at an early age. On the other hand, it is stated that, for many years, no accurate figures could be provided as the data was not properly registered and also because of the illegality of the premature termination of a pregnancy in the former Netherlands Antilles. Ibid.; *Statistical Yearbook Curaçao 2011* (Central Bureau of Statistics Curaçao), Willemstad December 2012, p. 36; *The situation of children and adolescents in Curaçao*, United Nations Children's Funds (UNICEF) 2013 provides an overview of the figures from 1999 until 2007, p. 41.

223 Many adults and parents deny the sexuality of young people and this state of mind is connected with values and standards which are religiously based.

224 Van Dijke & Terpstra 1987, pp. 85-103; *Jong & Moeder: een inventariserend onderzoek naar de situatie van tienermoeders op de Nederlandse Antillen* (Federatie Antilliaanse Jeugdzorg (FAJ) in samenwerking met SIFMA in opdracht van Samenwerkende Fondsen Aruba en Nederlandse Antillen), Curaçao/ Sint Maarten September 2010.

Furthermore, it is also related to the low self-image, lack of self-esteem and excessive materialism among some young females.²²⁵

In the late 1990s researchers had already started to address the sense of negativism that surrounded this social phenomenon. Besides being the main reason for the (in)voluntary dropping out of school by girls, an (in)voluntary pregnancy has many other negative socio-economic and psychological effects on the (further) development of the female. Premature termination of their education means that they lack proper qualifications for their possibilities and opportunities in the labour market and society. Vulnerability and dependency on the (financial and emotional) support from their family and the State are the results.²²⁶

A decline in parental support due to the changes in the socio-economic situation of many families and individualism in the family sphere causing a crumbling of the informal support system aggravated their vulnerability. Government support, which consists of a (low) periodical allowance and medical insurance,²²⁷ makes them (in)voluntarily end up in limited social welfare programmes and dependent on government aid.²²⁸

As a matter of fact, up until the 1990s young (single) mothers were not visible in society. The then inconsistent policy in the educational system related to the lack of possibilities for continuation of their studies, expulsion and gender stereotypes, aggravated the situation. The lack of guidance and proper sex education in the school system has contributed greatly to this situation.²²⁹ The (deficient) collaboration among the (non)governmental agencies and services coping with the problem confronted by teenage mothers was detrimental.²³⁰ The fact that abortion is officially illegal makes things worse. Illegally performed abortion without proper care, which is not uncommon, jeopardises the health and well-being of these females.

The research conducted by the Federation of Antillean Youth Care (FAJ)²³¹ in 2010 included the most recent developments and data on this issue.²³² It contained effectively the same objectives and information as the researches of the late 1990s. Persisting matters such as the non-participation of the girls in the educational system, their socio-economic

225 Pieter Kwiers 2004 (b), p. 4.

226 Constanacia-Kook 1996, pp. 21-35; Harseveld 1996; for information on this topic afterwards see George e.a. 2003, p. 53-55; *Jong & Moeder: een inventariserend onderzoek naar de situatie van tienermoeders op de Nederlandse Antillen* (Federatie Antilliaanse Jeugdzorg (FAJ) in samenwerking met SIFMA in opdracht van Samenwerkende Fondsen Aruba en Nederlandse Antillen), Curaçao/ Sint Maarten September 2010, pp. 38-40.

227 The old *'pour pauvre'* medical insurance card, known as the pp-card, gave access to free medical care. Poor people received this free of charge card for medical assistance from the Government. In 2011, there were 32,187 people with a pp-card. See the Statistical Yearbook Curaçao 2011 (Central Bureau of Statistics Curaçao), Willemstad December 2012, p. 33; as of January 2013 a general healthcare insurance was brought into force. It applies to everybody, with the exception of civil servants and people with private medical cover (P.B. 2013, no. 3).

228 *Jong & Moeder: een inventariserend onderzoek naar de situatie van tienermoeders op de Nederlandse Antillen* (Federatie Antilliaanse Jeugdzorg (FAJ) in samenwerking met SIFMA in opdracht van Samenwerkende Fondsen Aruba en Nederlandse Antillen), Curaçao/ Sint Maarten September 2010, p. 40.

229 *Ibid.*, pp. 29-31; Harseveld 1996, pp. 23-26.

230 Also, a suggestion for more (scientific) research in this field was made. Harseveld 1996, pp. 103-116.

231 The research was conducted under a collaboration between the Federation of Antillean Youth Care (FAJ) and *'Sentro di Informashon i Formashon na Bienestar di Mucha'* (SIFMA). *Jong & Moeder: een inventariserend onderzoek naar de situatie van tienermoeders op de Nederlandse Antillen* (Federatie Antilliaanse Jeugdzorg (FAJ) in samenwerking met SIFMA in opdracht van Samenwerkende Fondsen Aruba en Nederlandse Antillen), Curaçao/ Sint Maarten September 2010.

232 Data on teenage (single) mothers in the period of 2004 to 2008 was presented. *Ibid.*, pp. 23-24.

backwardness and the relationship with the begetters of their children were underlined.²³³ The absence of a coherent governmental policy directed at the advancement of (single) teenage mothers was accordingly a point of concern. Most remarkable was the mention of the second chance that was offered to these girls to educate themselves through the Compulsory Youth Training Programme of 2005,²³⁴ although it was not a (temporary) special measure directed to the development of the female. It contained, however, provisions sensitive to the specific situation of young mothers with children.²³⁵ The overrepresentation of females in this programme is undoubtedly related to the unjustifiable expulsion from school due to teenage pregnancy.

Although the law of compulsory education obliged schools to admit these girls back into school after childbirth, the damage as a consequence of their (temporary) expulsion was, in many cases, irreversible. The preventive suggestions related to the amelioration of school performance, the socio-economic situation and sex education of youngsters were justified.²³⁶ Adequate information on the governmental support and protection system and the rapid reincorporation of the female into the educational system are the most effective tools to address the negative effects for them and the community.

§ 9.10 Conclusion

In the General Recommendations issued by the Committee, it is affirmed that legal, social and religious traditions and customary practices within a society starting off from binary categories of superiority and inferiority, men and women, private and public, are disadvantageous to women. The Women's Convention rightly ensures under its Article 5 the obligation for State-members to introduce adequate (legal) measures to modify and transform discriminatory patterns of conduct that obstruct the advancement of women in society and stimulate a positive view towards motherhood and shared parental responsibilities. States have a duty to alter social and cultural constructs so as to favour the realisation of women's human rights.

In this chapter I began from the assumption of the fulfilment of the rights of women, as right-holders, by the State-Government, as duty-bearer, through its responsibility to change harmful gender stereotypes and to correct parental roles that perpetuate and keep the subordination of women in place. Curaçaoan women as right-holders have to be situated in such a manner though that they can profit from and become aware and conscious of their rights under the Women's Convention. This means that the empowerment of women by the modification of cultural and social patterns of conduct, the State's accountability in this process and the connection with the standards, values and principles enshrined in the Women's Convention as stipulated in the designed framework, all has to take place.

233 From the girls who participated in the investigation, less than 20% of the children were acknowledged by their fathers. *Ibid.*, pp. 35-37.

234 *'Aan de slag met sterke vrouwen in het Koninkrijk: onderzoek naar beleid en praktijk'*, De Universiteit van de Nederlandse Antillen/ Ministerie Binnenlandse Zaken en Koninkrijksrelatie (part 2)), Curaçao, March 2010, pp. 33-34.

235 See e.g. Art. 25 National Ordinance Compulsory Youth Training Programme which provided for financial compensation and (financial aid for) childcare.

236 *'Jong & Moeder: een inventariserend onderzoek naar de situatie van tienermoeders op de Nederlandse Antillen'* (Federatie Antilliaanse Jeugdzorg (FAJ) in samenwerking met SIFMA in opdracht van Samenwerkende Fondsen Aruba en Nederlandse Antillen), Curaçao/ Sint Maarten September 2010, pp. 43-61.

My examination showed that, although the direct enforceability of Article 5 paragraph a Women's Convention is disputed, the General Recommendations issued by the Committee provide handles and guidelines for the effectuation of the rights and obligations under this provision from a transformative approach at country level. Moreover, in its case-law the Committee uses this provision as a progressive reviewing instrument. This means that the State-Government, as the duty bearer, has to introduce proper educational and informative programmes directed towards the modification of persistent gender stereotypes and it must also cultivate maternity as an important social function and stimulate shared parental responsibilities in the education of children. The four distinctive functions of the provision are of importance for the compliance with this duty by governmental agencies. With its proper application at the domestic level, the scope of the Convention is strengthened and broadened, as Article 5 Women's Convention contains open concepts and, furthermore, it is a very dynamic and progressive provision in its nature.

Thus, the Executive has to adopt (legal) measures and programmes in accordance with the Women's Convention, in which attention is paid to harmful gender stereotypes and fixed parental roles. By addressing the discriminatory cultural and social gender-based perceptions in society, the realisation and protection of the fundamental rights of women could be guaranteed. Accordingly, the denomination of contemporary Curaçaoan society as a multi-cultural society can be put to the advantage of its people, particularly women. The fluidity of the concept of culture makes the transformation towards the accomplishment of real gender equality possible, favouring the further development of women. Social and cultural institutions like religion, law, media, labour and education have therefore an obligation to cooperate and change their approach on gender relations and the perpetuation of asymmetric results for men and women, which keep the power relations in place. Governmental agencies as duty bearers and all other actors have to direct their actions in a transformative way for the realisation of the desired results and in not keeping more than half of the population in a subordinate and oppressed status.

The fact is that limited financial, social and educational resources, a 'macho' and migratory attitude of men, patriarchal legal, social and religious constructs, among other things, have limited the effective participation and contribution of women in social areas. So, further societal participation and empowerment of women have to be realised and this can only be accomplished as a more progressive attitude towards their liberation and further development is adopted, and by leaving restrictive perceptions and mechanisms behind.

Locally, gender stereotypes and fixed parental roles are still directed towards the maintenance of existing power relations and the unequal division of economic resources. The centrality of women in the family does not provide enough space for local women to empower themselves, particularly within a patriarchal society where male-dominant rulings and the supremacy of the male are preserved. Undoubtedly, gender-stereotypes and the lack of socio-economic resources for women influence their behaviour in society. The socially and culturally accepted dissolute attitude and the two-faced sexual morality of many men and the objectification of women by the media and society, lead to many undesirable situations for women in society, like feelings of abandonment, illegitimacy and (in)voluntary single motherhood. These patterns of conduct are (un)consciously passed down to younger generations.

However, as a result of modern developments and migration waves, the prevailing gender-based perceptions in the education of the current younger generation have changed; a transformation which did not lead to societal improvements, but rather to the deterioration of values and standards and towards an excessively liberal lifestyle. This led to further disparity between the genders and to extreme individualism that does not favour the development of society or of women. In addition, the constructs within the formal educational system, together with societal factors, such as extreme materialism, the rise of a sub-culture of (institutionalised) violence, and severe forms of addiction, influence the socialisation process of youngsters, society and women in particular. Moreover, the educational system reproduces counterproductive patterns of conduct and asymmetrical results among the social groups based on class and race classifications that keep the power- and gender-relations in place.

Overall, the adverse and inherently contradictory position of local women has not improved much in the last decades; this was related to both internal and external factors. The influence of religion in the private sphere and on women, for instance, has been detrimental. The feminisation of the Catholic Church did not bring changes in the religious-based stereotypical approach to gender roles and gender relations. Despite sexual liberation, individualism, modernisation and '*Papiamentu*', elements which have touched its societal influence, religion (in)directly keeps a firm hold on societal changes through a religiously-based educational system. Gender stereotypes and fixed parental roles, next to socio-economic and environmental factors, such as the absence of the father (figure), lack of financial means, outdated school curricula and materials, and the (foreign) language of instruction are factors that the State-Government as duty bearer has to address, if it wants to bring about the rights of women in accordance with the standards and principles enshrined in the Convention.

Other issues, like the underachievement of boys and their premature dropping out of the educational system, lead to frustrations and constraints among them, such as feelings of inferiority, while a lack of future prospects is overwhelming. In the case of females, teenage pregnancy as the main cause for premature termination of their educational path leaves them enmeshed in the welfare system and in a spiral of poverty or necessity, under a failing family support system. The governmental support and protection systems are simply not sufficient to address the challenges that have to be confronted. So, the relevant mechanisms have to be strengthened or put in place as soon as possible.

The educational reforms of 2002 did not produce the desired changes. Consequently, the issues of youth unemployment, dropouts and pushouts remained major social problems. The introduction of the Compulsory Youth Training Programme offered a second opportunity to those youngsters who lacked prospects, which was a first step in the right direction. Yet, the lack of effectiveness of the programme constitutes a challenge. And although the gender aspect was not thoroughly taken into consideration in the programme and its subsequent evaluations, the fact that females form the majority of the participants means that the norms and standards laid down in the Women's Convention, and, inter alia, General Recommendations no. 25 and no. 27, have to be taken into account in any future adaptation of the programme, thereby ensuring the inclusion of a more prominent gender perspective in the programme. Its connection with the labour and educational sectors for the inclusion of youngsters has to become effective otherwise societal and labour participation,

self-reliance and empowerment of young females cannot be achieved. The sustainability of the programme continues to be a point of concern though, considering the financial and economic reality of Curaçao.

All in all, gender constructs do affect the participation of women in the educational and formal labour sectors. So, it is not surprising that the educational progress attained by women did not result in their upward mobilisation into powerful decision-making positions. This mobilisation is held back by occupational segregation, a male-dominated (organisational) culture, glass ceilings, and disparities in wages, ethnicity, and a gender-based undervaluing of certain occupations. Effectively, the participation of women in the formal labour market resulted in much disillusionment and many limitations for them. The lack of (financial and emotional) support, protection, childcare and after school activities for their children, combined with unfair gender stereotypes and fixed parental roles, created excessive burdens for women. The breaking down of the family support system aggravated the situation, endangering the education of children. Thus the adaptation of maternity leave regulations in 2012, which entail improvements in maternity leave, is not sufficient to cope with the many challenges which working (single) mothers are facing. Moreover, the regulations start from the premise of the primary responsibility for childcare and family being a responsibility for women, and not from the premise of equal parental responsibilities as stipulated in Article 5 paragraph b Women's Convention.

On top of that, women of the lower strata, locals and migrants alike, particularly single mothers, suffer the most from (extreme) poverty and deprivation. They lag behind in overall development and advancement. They are most in need of support and protection. Their lack of basic labour and social skills prevent a proper participation in the labour market and society. Structural government-funded adult vocational programmes and training, as prescribed by General Recommendations no. 25 and no. 27 for women over 25 years of age as temporary special measures, are badly needed.

In conclusion, although Curaçao, in comparison with many other small islands, is considered to be an affluent territory with a high per capita income, a closer look shows that many women – due to persistent gender stereotypes and fixed parental roles, and inadequate racial-based social and power structures – live in poverty, in situation of great disparity in comparison with men and (emotional and financial) deprivation, as they lack the essentials for the realisation of a respectable and dignified life, pursuant to the standards, principles and values enshrined in the Women's Convention. In my view, without the proper advancement of women in accordance with (Article 5) Women's Convention, the cultural and social transformation of Curaçao into a society based on social justice, gender equality and the rule of law cannot really be accomplished.

Chapter 10

CURAÇAOAN FAMILY RIGHTS AND ARTICLE 16 WOMEN'S CONVENTION

§ 10.1 Introduction

The freedom of women from discrimination in marriage, its dissolution and in family matters is ensured in Article 16 Women's Convention. Furthermore, women should have more authority in the bearing of children and in the number of children they want to have. Parents have the same rights in the education of their children. Under the scope of Article 16 Women's Convention also lies the obligation of the State-Government to take measures to eliminate domestic violence against women.¹ Both men and women should obtain the same rights in respect to the ownership, acquisition, and administration of their properties. Paragraph 2 of Article 16 Women's Convention states that the betrothal and the marriage of children have no legal effect. The State-Government is obliged to set a minimum age for marriage, and to make provision for the registration of marriages in an official registry.

In Curaçao, marriage is a highly valued institution. However, until 2001 spouses, particularly women, were not able to get an annulment of their marriage based on its breakdown. Marriage was seen as the cornerstone of society. Divorce was possible through the application of, for instance, the so-called blame construction.²

By 2001³ Book 1 of the Civil Code on the family law of the former Netherlands Antilles had undergone modernisation in several fields, including the law of divorce. Book 1, currently valid in Curaçao, underwent further adaptation in 2010 and the latest amendments were in 2012. Considering the obligations under Article 16 Women's Convention and the General Recommendations I examine the degree of compliance with them of a selection of provisions under Book 1 of the Civil Code which may affect directly or indirectly the position of women in the private domain. I explore if sex- and gender-based discrimination still exists in the family law of Curaçao in the selected areas and whether these areas need to be transformed in accordance with Article 16 Women's Convention and the General Recommendations.

The central question is:

Does there exist sex- and gender-based discrimination in the selected areas of family law?

1 See e.g. CEDAW GR 12 (1989); CEDAW GR 19 (1992), para. 22-24; CEDAW GR 21 (1994), para. 40.

2 For a short description see note 102 below.

3 The new Antillean Book 1 of the Civil Code came into force on 15 January 2001 (P.B. 2000, no. 178).

The following areas of the law are subsequently looked into: (1) the right to choose a surname; (2) marriage; (3) divorce; (4) parentage; (5) the judicial establishment of paternity; and (6) (joint) parental authority.

Accordingly, § 10.2 addresses the essence of Article 16 Women's Convention. The meaning of this provision as given in the General Recommendations is pointed out. In § 10.3 the foundation for the family law of the former Netherlands Antilles, i.e. Curaçao, is revealed. The right to a free choice of family name and surname of a child is examined in § 10.4. Subsequently, remarks are made on the institution of marriage in § 10.5. § 10.6 contemplates aspects of the law on divorce and its consequences for women. In § 10.7 an elaboration on the law on parentage is presented. The issue of judicial establishment of paternity is looked into in § 10.8. Parental rights and authority over children are examined in § 10.9. This chapter finishes with several observations.

§ 10.2 The essence of Article 16 Women's Convention⁴

Article 16 Women's Convention stipulates that women should have equal rights in all private matters. Its objective is to protect women against discrimination in these areas. Its first paragraph enhances the guarantee of equal rights of men and women in marriage and its dissolution, in matters related to their offspring, the women's right to decide whether they want to have children and the number of children, the choice of family name and property. However, the possession of equal rights does not always imply real equality, and this is certainly not the case in family matters.

As stated by Forder, equality in family life has a totally different connotation than equality in public matters, an area in which one exercises one's own political and civil rights. Yet, even in the private sphere, which is considered to be the area supposedly dominated by women, an absolute claim on equality by the genders can have undesirable results. The fact is that men and women have, in many areas of family life, different positions and authority.⁵ When contemplating equality in family matters I am obliged to take into account the uniqueness of the position of women. The implementation of only formal equality, such as in the case of property and parental rights, will not result in really equal treatment, as women start off from an inferior position in the private sphere. Their rights in family matters would actually be better served by the implementation of a tailor-made equality norm, and by the realisation of substantial or transformative equality.

Article 16 paragraph 1 Women's Convention thus upholds open concepts which have to obtain a more immediate and specific meaning through legal measures and policies introduced by the national State-Governments. Yet, despite this acknowledgement, the persisting socio-cultural stereotypical prejudices and traditions within a society obstruct the realisation of equality for women in the family sphere. The Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriage of 1962⁶ was the first international document which addressed this issue, although unsatisfactorily in many aspects. Afterwards Article 6 Declaration on Women's rights (DEDAW) of 1967,⁷ applied

4 For an extensive elaboration on the scope of this provision see Freeman 2012, pp. 409-442.

5 Forder 1994, pp. 239-253; Willems 1996, pp. 26-27.

6 GA A/RES/1763 (XVII).

7 GA A/RES/2263 (XXII).

a concrete provision on the equal position of women in family matters, like its successor Article 16 Women's Convention.⁸

A more tangible and direct provision on betrothal and the issue of forced marriage of the female child is given in the second paragraph of Article 16 Women's Convention. State-Governments were given an obligation to adopt legislation which prohibits these practices. They are obliged to take all (legal) measures on the establishment of a minimum age for marriage and for the registration of marriages. One critical point regarding this provision lies in the fact that the provision does not stipulate a universal minimum age of marriage. State-parties are ultimately autonomous in the stipulation of the age limit. It is arguable that, based on the Convention on the Rights of the Child,⁹ the universal minimum age for marriage should be 18 years of age, as every person under this age limit is considered to be a child, with the exception of the cases where majority can be attained earlier.¹⁰

According to the Committee children should under no circumstances be allowed to engage in marriage.¹¹ Even now, there are still differences among State-parties on this matter based on cultural and religious justifications and perceptions.¹² In sum, with this quite Article 16 Women's Convention, the main area where women are involved, namely the family sphere (life), is put under public scrutiny. The main roles performed by women occur in this domain, thus a closer contemplation of the contents and meaning of this provision provided by the Committee would seem to be appropriate.

§ 10.2.1 *General Recommendations on Article 16 Women's Convention*

The Committee has provided further explanation on the meaning of Article 16 Women's Convention through its General Recommendations. It has done so with many other provisions of the Women's Convention.¹³ General Recommendations no. 21 and no. 29 form the core of the clarification on Article 16 Women's Convention, but other General Recommendations like Recommendations no. 12, no. 19, and no. 27 give additional specifications.

General Recommendation no. 12¹⁴ provides the first directions on the phenomenon of gender-based violence that occurs within the family. States-parties got from it an obligation to adopt and enforce legislation and measures to protect women against this type of violence. They have an obligation to inform the Committee about progress in the field of the eradication of gender-based violence and on the existence of support services and statistical data on the matter in their periodic reports. The Recommendation in itself does not provide any explanation on the meaning and interpretation of Article 16 Women's Convention. In short, it gives no support to the State-parties when implementing the provision.

The subsequent General Recommendation on the family rights of women is General Recommendation no. 19. This Recommendation does not provide any further explanation

8 Freeman 2012, pp. 410-414.

9 See e.g. Art. 1 ICRC.

10 For cases at local level see § 10.5.1.

11 CEDAW GR 12, (1989), para. 36.

12 Freeman 2012, pp. 436-438.

13 See e.g. CEDAW GR no. 8 (1988) on Art. 8; CEDAW GR no. 23 (1997) on Art. 7; CEDAW GR no. 24 (1999) on Art. 12; CEDAW GR no. 25 (2004) on Art. 4 CEDAW; CEDAW GR no. 28 (2010) on Art. 2 CEDAW; CEDAW GR no. 29 (2013) on Art. 16.

14 CEDAW GR 12 (1989).

on the interpretation of the provision either.¹⁵ The Committee stated herein that, under the definition of discrimination against women, also lies violence against women, and that gender-based violence impairs women's enjoyment of their human rights and fundamental rights. It contains the right of women to equality in the family.¹⁶ Compulsory sterilisation and abortion affect the general health of women and these practices infringe the right and authority of women on the bearing and the number of children, as pointed out by the Committee. It stated further that women are exposed to all sorts of gender-based violence within the family, and that this violence also included the abrogation of their family responsibilities by men.¹⁷ Ultimately, the Committee put forward that the State-Governments have an obligation to take several appropriate and effective (legal) measures to eradicate gender-based violence in the private and public sphere. The objective of Article 16 Women's Convention does not just consider the eradication of gender-based violence though. In this sense Forder remarks that, although legal measures like Article 16 Women's Convention may help to combat gender-based violence, the issue should be attended by social constructs and public administration.¹⁸

In its General Recommendation no. 27,¹⁹ on the rights of older women, the Committee emphasises the family rights of this vulnerable group of women. Therefore, their family rights ought to be protected by the State-Government as well. General Recommendation no. 29, building on General Recommendation no. 21, considers the economic consequences of marriage, family relations and their dissolution. As it became clear that women were economically worse off in a family relationship and adversely affected after the dissolution of their relationship, the Committee engaged in the formulation of this Recommendation in 2013.²⁰

General Recommendation no. 21²¹ is the most significant recommendation of the Committee on the interpretation and proper implementation of Article 16 Women's Convention at country level. It provides extensive comments on the meaning and nature of this provision, thus on equality in marriage and family relations and on the relationship between culture and tradition and the equal rights of women in family matters. Not surprisingly, background information on the position of women in society is first given. Through this it is confirmed that women still perform many roles in the private sphere and that gender-stereotypes influence this adversely. It underlined the undeniable value of these roles for society and that they ought to be recognised. The unquestionable correlation between Article 5 and Article 16 Women's Convention is acknowledged here. Moreover, according to the Committee there is no justification for the existence of discriminatory regulation, customs and unequal treatment of women. It pointed out that even in societies where equality *de jure* exists, the genders still have different social roles which maintain the inferiority, and thus subordination and oppression, of women. This often results in the violation of the principles of equality protected by particular provisions under the Women's Convention.

15 CEDAW GR 19 (1992); De Boer 2003.

16 Ibid., paras. 6-7.

17 Ibid., paras. 12-13.

18 Forder 1994, pp. 239-242.

19 CEDAW GR 27 (2010).

20 CEDAW GR 29 (2013).

21 CEDAW GR 21 (1994); see also De Boer 2003, pp. 31-40; Boerefijn 2004, p. 8.

Subsequently, the various forms of family²² worldwide, thus also de facto (common-law) unions²³ are acknowledged. It is pointed out that regardless of the family forms, legal system, religion and custom and tradition in a society, the equal treatment of women in the family should be based on the principle of equality and justice. Herein a connection is made between the provisions and the principles stipulated in Article 16 and Article 2 Women's Convention.²⁴ This is reiterated in General Recommendation no. 29,²⁵ where the meaning of the subparagraph of Article 16, as a result of the examination of the State reports by the Committee, is addressed. Also, the State obligation to transform and scrutinise family law and policy on their sensitiveness for gender-stereotypes like 'the "public" aspects of individual and community life' is underlined.²⁶

The State-Governments were urged to comply with the provisions of General Recommendation no. 19, on the elimination of gender-based violence which influences negatively the position of women within the family.²⁷

Furthermore, the Committee voiced its concerns about the fact that many State-parties have made culturally and religiously-based reservations to the implementation of Article 16 Women's Convention, which are incompatible with the object and purpose of the Convention. This position was confirmed in its General Recommendation no. 29.²⁸ Many countries maintain a belief in the patriarchal family structure that begins with and keeps in place the superiority of the male.

Deterioration in the position of women within the family due to various factors has been acknowledged by the Committee. It advised countries therefore to discourage notions of inequality among men and women, affirmed by (private) law, religion, custom and socio-cultural prejudices. States have an obligation to align their respective family law with the provisions of the Convention, and not with local religion, custom and socio-cultural perceptions. They were consequently urged to transform all domestic legislation, which contained discriminatory provisions against women, and to take the necessary (legal) measures to redress the inequality experienced by women.

State-parties have to comply among other things with Article 16 Women's Convention and they have to adopt and implement adequate legislation in accordance with the objective of the Women's Convention.²⁹ They also have many obligations in regard to the supply of information and measures on the economic consequences of the formation of a family, during the relationship and after its dissolution, starting from the premise of equality between the spouses.³⁰ Considering all the above, I scrutinise the conformity of a selection of provisions in Curaçaoan family law with the norms and standards under Article 16 Women's Convention and General Recommendations no. 21 and no. 29. Herewith the importance

22 The existence of polygamous marriages, in accordance with personal or customary law in many societies, is acknowledged by the Committee, with concern. These marriages are a violation of the equal rights of women and of the essence of the Convention. CEDAW GR 21 (1994), paras. 13-14; CEDAW GR 29 (2013), paras. 27-28.

23 According to Freeman neither the Committee nor any other treaty-based body has defined this concept explicitly. See Freeman 2012, pp. 417-419.

24 CEDAW GR 21 (1994), para. 11-12.

25 CEDAW GR 29 (2013), paras. 16-31.

26 *Ibid.*, para. 18.

27 CEDAW GR 21 (1994), para. 40.

28 *Ibid.*, para. 41; CEDAW GR 29 (2013), paras. 3, 54-55.

29 *Ibid.*, paras. 31-40.

30 *Ibid.*, paras. 20-23; CEDAW GR 29 (2013), paras. 32-48.

and the added value of the Convention and the General Recommendations on local law become evident.

§ 10.3 The legal foundation of the family law of Curaçao

In Curaçao *de jure* equality and non-discrimination has been established through several legal measures. The first and highest domestic provision is laid down in Article 3 Constitution of Curaçao. It would not surprise me though if there are still discriminatory domestic laws in breach of this equality norm which are still being implemented. I set off therefore from the presumption that discriminatory law containing gender stereotypes affects the fulfilment of (some areas of) the family rights of women in Curaçao.

The family law of Curaçao is modelled on the family law of the Netherlands and this construct finds its ground in the concordance principle under Article 39 paragraph 1 Charter.³¹ The validation of this principle for family law is acknowledged by several scholars.³² In his appreciation Kunneman stated, already in the 1990s, that in reality the national jurisdictions within the Kingdom did not bear a strong concordance in legislation. Nonetheless, there are many practical reasons, such as the use of modern literature and case-law from the Supreme Court of Justice, for the necessity for the Caribbean countries to comply as much as possible with the concordance principle. In this sense, he suggested that the more liberal Dutch law, particularly in the case of civil law, has to be seen as the reception and transformation of foreign law into the domestic law of the Caribbean countries, rather than just compliance with the concordance principle.³³

Thus, it is quite understandable that, for a proper and modern understanding and appreciation of the domestic family law, the developments of the family law of the Netherlands are also taken into account, particularly the decisions of the Supreme Court of Justice. However, considering the socio-economic and cultural differences between the Caribbean countries on the one hand and the Netherlands on the other hand, a full reception and assimilation of the foreign family law of the latter by the former would be unpractical and unrealistic. Despite this, it should not be a surprise if I conclude in advance that the family law of the former Netherlands Antilles, i.e. Curaçao, sets out from patriarchal perceptions and norms, like the family law of the Netherlands does.

This belief is confirmed by De Hart, who suggests that many measures in Dutch family law are not gender-neutral, despite the aspiration to accomplish gender equality. It reproduces (un)intentionally stereotypical ideas about parenthood and the patriarchal family structure. This is visible in the law on surnames where the primacy of the man³⁴ is still present and also in many regulations on parental authority. Male-oriented norms and perceptions keep the oppression of women, particularly in the private sphere, in place, as is shown in the examination of the weaker position of specific groups of women³⁵ in Dutch

31 The legal areas are inter alia: the civil and commercial law, the law of civil procedure, criminal law, the law of criminal procedure, copyright, industrial property, the office of notary.

32 Consider e.g. Kunneman 1992, pp. 221-234; Maris 1999, pp. 114-128; De Hondt 2007 (a), pp. 107-125.

33 Kunneman 1992, pp. 223-224; Kunneman 1990, pp. 13-33.

34 See Art. 5 para. 5 Civil Code of the Netherlands.

35 De Hart's article addresses the position of black, migrant, refugee women and Dutch women with foreign life partners. She investigated the position of these women in regard to their family rights according to family law and foreign law in the Netherlands. According to her the family law of the Netherlands is based on the

society. This is the reason why De Hart remarks conclusively that the State-Government of the Netherlands cannot solely combat inequality within the family law through formal and substantial equality-norms; on the contrary, more fundamental changes have to be introduced.³⁶ Whether these fundamental changes suggesting a transformative approach have been introduced is another question. Considering the scope of this investigation, I withhold further comments on this issue.

Presumably the domestic family law, as a 'reception' or translation of the Dutch regulation, would contain many of its patriarchal perceptions and ideas. This was certainly the case with the old Book 1 of the Civil Code of the former Netherlands Antilles.³⁷ Thus, it is not surprising that in a short review of the status of the old Book 1 of the Civil Code in 1997, De Boer stated that the old book upheld many provisions which confirmed and maintained the subordination of women in family matters. In this exercise many provisions were viewed in the light of Article 14 ECHR. He pointed out that, for instance, the right to a choice of a surname was considered by the Court as unequal based on sex. The minimum age to engage in marriage upheld a discriminatory provision as well. Furthermore, both the Antillean legislature and the judiciary were at a certain point forced to address the inequality between legitimate and illegitimate children due to the *Marckx v Belgium* case.³⁸

In an assessment on the amendments during the period 1990-2000 the same author³⁹ remarked that, with the exception of the introduction of legislation on the 'chòler'⁴⁰ guardianship,⁴¹ the family law of the former Netherlands Antilles remained unchanged. At the end of the 1990s general proposals⁴² for the modernisation of the family law of the former Netherlands Antilles were made as a consequence of new social demands and case-law. Prior to this, no significant changes were registered in Book 1 of the Civil Code of the former Netherlands Antilles.⁴³ The Antillean legislature was forced to commence the process of the reform of the old Book 1 of the Civil Code of the Netherlands Antilles. The point of departure and reference became, as anticipated, the more liberal Book 1 of the Civil Code of the Netherlands of 1970,⁴⁴ which sets out from general concepts such as family, family life, parenthood, children and parentage.⁴⁵

principles of formal equality and freedom, and the foreign law starts out from limitations and inequality. She illustrated this with the implementation of the Law on the prevention of marriages of convenience of 1994 (*Wet voorkoming schijnhuwelijk 1994*) which jeopardises women disproportionately. De Hart 2002, pp. 95-103.

36 Ibid., pp. 95-96.

37 The old Civil Code of the former Netherlands Antilles, prior to its modernisation in 2001, dated from 1868 (P.B. 1868, no. 16). It was actually the Civil Code of the colony of Curaçao. The law came into force on 1 May 1869 (P.B. 1868, no. 18). It underwent numerous amendments in the course of time. For an overview see Murray e.a. (eds.) 2005, p. 17.

38 Duinkerken & Loth (eds.) 1997, pp. 268-280.

39 De Boer 2000, pp. 277-286.

40 'Chòler' is the local term for a drug addict. Drug addiction became an additional ground for the imposition of the legal measure of guardianship through the Court based on Art. 1:378 para. c Civil Code. This ground was put on the same level as the grounds of insanity and squandering.

41 P.B. 1995, no. 63.

42 These proposals concerned the modernisation of legislation regarding divorce and the dissolution of marriage and the establishment of paternity.

43 For an overview of the amendments on the Civil Code (old) of 1868, see Murray e.a. (eds.) 2005, p. 17.

44 For a short elaboration on the matter, see the contribution of Sijmonsma 1999, pp. 334-340.

45 Asser/De Boer 2010.

One of the main concepts of Dutch family law, after the amendments of the Act of 1998, became parentage. Family on the other hand has a broader composition in the Dutch system as the legal concept does not always correlate with the reality of societal family structures. Family life under Article 8 ECHR influenced this concept, and it consequently led to the broadening of its usage.⁴⁶ The open character of Article 8 ECHR led to a more substantial approach to the concept and to the entire family law of the Netherlands, and thus also that of the former Netherlands Antilles and Curaçao.⁴⁷ In sum, an appreciation of aspects of family law including those aspects which I have already mentioned is not accurate and complete without contemplation of Dutch literature, and of the case law of the European Court of Human Rights and of the Supreme Court of the Netherlands.

Antillean family law⁴⁸ underwent a modernisation,⁴⁹ modelled on the Dutch,⁵⁰ which came into force in 2001. The main objectives of the revision were directed to: (1) the establishment of equal treatment between men and women; (2) the liberalisation of and creation of more accessibility to divorce law; and (3) the elimination of the discrimination between legitimate and illegitimate children. Issues like the choice of surname, marriage, its dissolution, i.e. divorce, the law of descent and parental authority were all addressed. This law was afterwards amended in 2010⁵¹ and the latest changes came into force in 2012.⁵²

The more conservative and traditional values valid in Curaçaoan society were expressed in the recording of a less liberal legislation though. Local customs and traditions made their mark here and there on the formulation and the interpretation of several rulings.⁵³ This becomes evident throughout the examination of the selected areas. Moreover, Book 1 of the Civil Code upholds provisions which are not even introduced in the Netherlands, such as (1) the previously mentioned 'chòler' guardianship,⁵⁴ (2) the right to alimony on the dissolution

46 Its influence became visible through the case law of the European Court of Human Rights and the Supreme Court of the Netherlands in the last three decades.

47 Schrama 2009 (b), pp. 13-16.

48 Antillean family law of 2001 became Curaçaoan family law after the dissolution of the Netherlands Antilles on 10 October 2010, based on add. Art. I Constitution of Curaçao in conjunction with the National ordinance 'General transitional arrangements' legislation and administration country Curaçao (Annex to A.B. 2010, no. 87).

49 According to De Boer the revised Book 1 of the Civil Code of the former Netherlands Antilles of 2001 was merely a conservative copy of the Dutch. Many issues were not incorporated, such as registered partnership and same sex marriage. Also, issues like transsexuality, adoption by homosexuals, the judicial identification of paternity, revision of the right to choose a family name, non-marital parental authority and pension equalisation were not incorporated. Antillean family law included other innovations in comparison with the family law of the Netherlands though, like honeymoon-tourism, limitation of recognition by non-biological father and the 'chòler' guardianship. De Boer 2011, pp. 701-704.

50 Maris 1999, pp. 119-128.

51 The revision of the law on surnames came into force in 2010 (P.B. 2010, no. 29; P.B. 2010, no. 85).

52 The Acts on the introduction of judicial determination of paternity (P.B. 2011, no. 56) and joint parental authority (P.B. 2011, no. 57) came into force on 1 January 2012 (P.B. 2011, no. 69). Also the new ordinance of Succession and Gift came into force on 1 January 2012 (P.B. 2011, no. 68; P.B. 2011, no. 70).

53 Sijmonsma 1999, pp. 335-338.

54 Article 1:378 para. c Civil Code. In an early contribution on this subject van den Dungen stated that the petition for the application of this measure originated from the relatives of the 'chòlers'. This is rather contrary to the aim of the measure as formulated by the legislature. It was merely an instrument for the authorities to address public nuisance caused by these drug addicts. Van den Dungen 1998, pp. 914-915. As a confirmation of this thesis, see the following cases: GEA of 12 November 2007, LJN:BK 1803; GHvJ of 22 February 2011, LJN:BQ0635.

of common-law marriages⁵⁵ and (3) the obligation of the begetter of a child to pay the costs related to childbirth and to provide financial support to the mother during a period of six weeks after childbirth.⁵⁶

§ 10.4 The law of surnames

The old legislation in regard to the freedom to choose a family name mandated that (a) the child born in wedlock, (b) the child recognised by its (biological) father or (c) the one adopted obtained the surname of the husband of its mother. According to Article 299 and Article 320 Civil Code (old) the husband thereby became legally the father of the child, resulting in the establishment of an affiliation with the child. The question whether he was or not the biological father of the child was not relevant. The possibility to make any choice of surname by the parents of the child was non-existent.⁵⁷ Children born out of wedlock, so-called illegitimate children, who were not recognised by their (biological) father, obtained the last name of their mothers. Case law and much criticism⁵⁸ in favour of reform stimulated the adaptation of this law and demographic⁵⁹ developments also demanded this. In a demographic sense, the Antillean system resulted in an undesirable situation for children born of 'Latino' parents. An Aruban case of 1998⁶⁰ of the Common Court of the former Netherlands Antilles and Aruba granted the choice of family name in regard to the father's surname to a 'Latino' couple for their newborn, but this verdict was dismissed by the Supreme Court of Justice, as according to the latter it was against the then valid law of surnames of Aruba and legal certainty.

It became clear through, inter alia, this case that the law of surnames in the former Netherlands Antilles was discriminatory. Changes to and modernisation of the legislation became wholly necessary.⁶¹ Even the more modern Dutch rule on surnames of 1998⁶² had endured much criticism by this time as it proved to be inconsistent with international equality norms such as Article 26 ICCPR⁶³ and Article 16 Women's Convention.⁶⁴ Following Dutch law parents had a choice, yet in the case of a conflict the surname of the father prevailed. Despite this criticism the European Court of Human Rights, in the *Bijleveld v the Netherlands* case of 2000⁶⁵ on the Dutch law of surnames of 1998, stated that the Dutch rules upheld justifiable restrictions on the possibilities concerning surnames in the interests of the public based on the wide margin of appreciation in this legal area of State-parties.

55 Article 1:408b Civil Code.

56 Article 1:408a Civil Code.

57 See e.g. GEA of 5 November 1980, in: TAR 1981, no. 1, pp. 171-174.

58 Sijmonsma 1999, pp. 336-337.

59 The migration of people from Latin American countries which maintained the so-called Spanish system was accompanied by many challenges. According to this system, which countries like Colombia and Venezuela uphold, children obtain two family names at birth. The family name consists of the last name of the father and the mother.

60 HR 13 February 1998, NJ 1998, no. 57.

61 Explanatory Memorandum on the revised national ordinance on surnames, 2008/2009, 3413, no. 3, pp. 1-3; De Boer 2000, p. 283.

62 Stb. 1997, no. 463

63 Consider, prior to the introduction of the current Dutch law on surnames in 1998, the judgment of the HR September 1988, NJ 1988, no. 740 (*Beukema-Van Veen*).

64 De Hondt 2007, pp. 113-114; see also Schrama 2009 (c), p. 17.

65 Judgment of 27 April 2000, Appl. no. 42973/98 (*Bijleveld v. The Netherlands*).

In this case the rejection of a request to change the surname of a child under the given circumstances was not a violation of family life or a discrimination against women.⁶⁶

The more progressive amendments of the former Netherlands Antilles came into force in 2010.⁶⁷ The provisions ended allegedly every presumption of inequality. Already in 2006 De Hondt had remarked that it would have suited the legislature of the Netherlands, following the concordance principle in Article 39 Charter, to adopt a provision following the then Antillean proposals on the law of the surname, which became law in 2010, as it removed all possible presumption of inequality among the spouses, i.e. parents.⁶⁸ In their comparative contribution in 2013, on the law of the surname in the legal systems of the countries within the Kingdom, particularly between the Aruban and the Dutch system, Gielen and de Groot exposed the similarities and differences between and the inconsistencies within the systems which are to the (dis)advantage of the inhabitants of the countries, particularly women. Useful propositions were presented to realise more uniformity in the systems in this area.⁶⁹

The differences in progressiveness in the systems became evident in an interesting case which played out on the island-territory of Bonaire in 2013, where the old Antillean ruling is still valid. This ruling meant that a child recognised by its father received his father's surname statutorily, while the parents wanted the child to maintain the surname of its mother after recognition by the father. The Court considered in the *B. v S.* case⁷⁰ that as the law on surnames valid in the BES-islands did not follow the Dutch law on surnames of 1998 or the Curaçaoan law of 2010, it was entirely in contradiction with international law and (inter)national case-law. It stated that it was up to the legislature to make an eventual choice as to the system.⁷¹ Nevertheless, considering the circumstances of the case and the wishes of the parents, the Court decided finally that, in compliance with international equality norms, including Article 16 paragraph 1 Women's Convention, the child could maintain the surname of its mother after recognition.⁷²

In my opinion it was a unique Caribbean case where the Court did explicitly refer to the guarantee provided in the Women's Convention for the realisation of equality among parents in regard to the surname for their offspring.

§ 10.4.1 *Rights of parents to choose the surname of their children*

The equal right of parents to choose a surname for their offspring is currently valid domestically.⁷³ The point of departure is that both parents should have free choice of the surname of their offspring. This is an obligation that has to be ensured by the State-Government as (in)directly mandated in Article 16 paragraph 1 subsection d and g Women's Convention.

66 In this case the claim enhanced the contention that the Dutch rules on surnames constituted a violation of the principle of non-discrimination as well as interference in family life as formulated in several international conventions, such as Art. 8 and Art. 14 ECHR, Art. 26 ICCPR and Art. 2 and Art. 16 Women's Convention.

67 P.B. 2010, no. 29.

68 De Hondt 2007 (a), pp. 115-116.

69 Gielen & de Groot 2013, pp. 3-21.

70 Decision of 8 October 2013, Ghis 62228 – EJ 2/13 – H 155/13, (*B. v S.*) (unpublished).

71 *Ibid.*, paras. 5.4-5.8.

72 *Ibid.*, para. 5.11.

73 See P.B. 2010, no. 29; P.B. 2010, no. 85.

In the case of Curaçao, this is guaranteed and accomplished through Articles 1:5 to 1:9 Civil Code that regulate the issues of the choice of the surname and family name. The free choice of a surname is firstly set out in Article 1:5 paragraph 1 Civil Code. Parents can choose between the family name of the father, the family name of the mother or a combination of these two surnames in no particular order.⁷⁴ This right has one restriction though. The right to a free choice of surname only applies to the first born. The other children born of the same parents must bear the same surname or surname sequence as their oldest sibling. This measure was introduced to secure the unity of the family name and it is formulated in Article 1:5a paragraph 1 Civil Code.⁷⁵ If a conflict arises in regards to the choice between the parents, the Court can be asked for a final decision in this matter with due consideration for the interests of the child.⁷⁶

A child born out of wedlock, and who is not recognised by its (biological) father, bears the surname of its mother under Article 1:5f Civil Code. The child maintains the family name of its mother in the case of recognition by the (biological) father or by the implementation of the instrument of judicial identification of paternity, unless the parents by a joint declaration at the moment of the recognition or at the judicial decision on the establishment of paternity make it explicitly clear that they want to alter the surname of the child. If the declaration on the choice of a surname takes place at the birth registration, the child will bear the chosen last name from birth.⁷⁷ However, with the enactment of the provision under Article 5i paragraph 2 Civil Code, it can be seen that the primacy of the man still prevails. This norm prescribes that, when no choice of a surname has been made at the birth registration the registrar of births takes the surname of the father as the surname of the child. At the same time a provision on the choice of a surname in the case of adoption was also incorporated. Adoption in itself does not imply an automatic change in family name.⁷⁸ The surname can ultimately be altered solely pursuant to Article 1:7 Civil Code.⁷⁹ The person in question or a representative can submit a petition and the name will be altered by decree.⁸⁰

In sum, the domestic provisions regarding the surname are in some aspects broader than those applied in the Netherlands. In this sense I have to agree with the comments made by De Hondt when she stated that the Netherlands can take some lessons from the position of the Antillean legislature on this matter. Thus, this aspect of the domestic law complies for the most part with the obligation as formulated in Article 16 paragraph 1 subsection d

74 The combination of names may however only constitute two parts, i.e. names. The Advisory Board of the Netherlands Antilles 2009, RvA no. RA/025-07-08; www.raadvanadvies.cw, last visited 15 April 2015.

75 Explanatory Memorandum to the revised national ordinance on surnames 2008/2009, 3413, no. 3, p. 2.

76 However no real scrutiny tools have been supplied by the legislature to the judiciary in this case. Therefore problems may surface when the judiciary is obliged to provide a solution for these conflicts. Article 1:5b para. 1 Civil Code; Explanatory Memorandum to the revised national ordinance on surnames 2008/2009, 3413, no. 3, pp. 4-5.

77 Article 1:5g and Art. 1:5h Civil Code.

78 Article 1:5l Civil Code; Explanatory Memorandum to the revised national ordinance on surnames 2008/2009, 3413, no. 3, p. 6.

79 In the Netherlands the legislature established other ways in which an alteration of the family name can be accomplished. The ways are set out in Art. 1:5 para. 2, Art. 1:253t para. 5 and Art. 1:282 para. 7 Civil Code of the Netherlands. Oddly enough these provisions were not incorporated in the Civil Code of Curaçao. For an elaboration on the matter, see Schrama 2009 (c), pp. 22-24.

80 The procedure on the alteration of the family name should be stipulated in a national decree, pursuant to Art. 7 para. 5 Civil Code.

Women's Convention. Yet, Article 5i paragraph 2 Civil Codes portrays a norm that starts from gender-based stereotypical ideas; this is something the legislature has to address.

§ 10.4.2 *Equal right of spouses to choices in the surname*

Another aspect related to the issue of the surname in the former Netherlands Antilles concerned the old compulsory custom by which married women tended to carry the surname of their husbands before their maiden name, whereas the husband did not have any (moral) obligation to alter his surname after marriage. This implied in itself an unequal approach on the matter and an expression of the division of powers among the spouses.

The equal rights of spouses in the choice of family name are currently guaranteed in Article 1:9 paragraph 1 Civil Code. This is in accordance with what is prescribed in Article 16 paragraph 1 subsection g Women's Convention. The latter provision states that State-Governments have an obligation to take all measures to eradicate unequal treatment against women in the choice of a family name, occupation and profession. The Committee has further clarified this in paragraph 24 of General Recommendation no. 21. It states among other things as follows:

Moreover, each partner should have the right to choose his or her name, thereby preserving individuality and identity in the community and distinguishing that person from other members of society. When by law or custom a woman is obliged to change her name on marriage or at its dissolution, she is denied these rights.

This implies that women like men should have equal rights in the choice of their surname. They ought to have the possibility to keep their maiden name after marriage, if they choose to do so. Article 1:9 Civil Code upholds a provision on the right to a choice of surname by a married or divorced woman. Married women can freely carry the name of their (former) husbands as is usual, although they are not obliged to. Husbands also have the option to carry the family name of their wives if they choose to do so. The provision says explicitly that the husband also has this right, following Article 1:9 paragraph 3 Civil Code. The provision ultimately does not support an alteration in the name of the spouses.⁸¹

Many (married and divorced) women still have a tendency to comply with the societal custom to carry the last name of their husband though. On the other hand, only a former husband can, based on justifiable reasons and where there are no offspring, through the Court of Justice, forbid his former wife to carry his name, pursuant to Article 9 paragraph 2 Civil Code. This possibility is not explicitly created for the former wife.⁸² All in all, with the exception of the issue set out in Article 9 paragraph 2 Civil Code, no major challenges have been encountered on the issue of the equal rights to a free choice of a surname for women in the domestic legal system.

81 Explanatory Memorandum to the revised national ordinance on surnames 2008/2009, 3413, no. 3, p. 3; Murray e.a. (eds.) 2005, pp. 25-26.

82 Asser/De Boer 2010, no. 49-50.

§ 10.5 Some aspects of the law of marriage

The first notions about the liberation of the conservative and sacred view on marriage upheld by Christianity, and particularly the Catholic Church, were registered after the Enlightenment period in Western Europe. This process culminated for the Netherlands in the late twentieth century with the introduction of the liberal divorce law of 1970.⁸³ In the more traditional Antillean society, the institution of marriage remained a sacred institution, focused on procreation, despite the absence of a common morality on marriage as affirmed by Maris.⁸⁴ In spite of the exclusive status of marriage, the old rulings upheld several discriminatory provisions, such as a differentiation in the minimum age of marriage.⁸⁵ No other form of cohabitation⁸⁶ or union was legally recognised or accepted by the time of the revision of the old Antillean Book 1 of the Civil Code. No further modernisation and/or liberalisation on same sex marriage and registered partnership have taken place afterwards either.

According to Article 16 Women's Convention State-Governments are obliged to take all appropriate measures to eradicate the unequal treatment of women in all matters relating to marriage and family relations based on the principle of equality between the genders. In regard to marriage and its dissolution, it is stipulated that men and women should be able to choose a partner and consent freely to marriage and have equal responsibility about these matters. The premise is that unjustified preferential treatment of one of the genders leads automatically to discrimination and oppression of the other; thus, of the subordination of the wife by her husband. This is explicitly prohibited by the Women's Convention.

Through the institution of marriage the main roles of women unfold. Article 1:30 paragraph 1 Civil Code⁸⁷ stipulates that marriage is only possible between a man and a woman. This means that same sex marriages are still legally not allowed. Registered partnership is not provided for either. Subsequently, this norm limits the protection and benefits at the disposal of women living in same sex marriages or *de facto* unions. In a case of 2010,⁸⁸ concerning a same sex marriage contracted in the Netherlands, unions which are allowed to be registered as marriages in the legal system of the former Netherlands Antilles i.e. Curaçao, pursuant to Article 40 Charter,⁸⁹ this became evident. In spite of this registration, pension benefits and healthcare insurance were denied to the claimant's spouse and her spouse's child by her employer. As same sex marriages were not regulated under Article 1:30 paragraph 1 Civil Code, the Court of Appeal considered that there was no obligation upon

83 For a short elaboration on the history of the institution of marriage and its dissolution, see Spruit 1989, pp. 307-323.

84 Maris 1999, pp. 116-119.

85 The minimum age for marriage for men was set at 18, while that of women was set at 15 years, pursuant to Art. 1:78 Civil Code (old).

86 In this sense I refer to (1) registered partnership and (2) same sex marriage. Unlike the situation in Curaçao, these forms of cohabitation are legally recognised in the Netherlands.

87 Subjects like marriage, the procedures related to it, the obligations (rights and duties) of the spouses towards each other and marital conditions are extensively regulated in titles 5 – 8 Book 1 of the Civil Code of Curaçao. For elaborations on these topics see Asser/De Boer 2010, no. 103-287; De Hondt 2007 (b), pp. 76-87; Pitlo/Van der Burght & Doek 2002, pp. 53-87.

88 GHvJ of 22 June 2010, ECLI: NL:OGHNA:2010: BM9524.

89 This provision provides that engrossments of authentic acts issued by the Court may be enforced throughout the entire Kingdom, with due consideration and observance of statutory provisions in the country of enforcement.

the employer, the *Capriles Kliniek*, to equate same sex marriage with opposite sex marriage; it had explicitly excluded same sex marriages in the agreement.⁹⁰ The exclusion of local same sex de facto unions from benefits under the agreement made impermissible, in its turn, the granting of benefits to persons within same sex marriages under Dutch law which, following Article 40 Charter are registered marriages at local level.⁹¹ However, the Court viewed that the recognition solely of opposite sex marriage under domestic law did not form a justification for a distinction based on sexual orientation in de facto unions when granting benefits. The Court pointed out finally that the differential treatment of same sex de facto unions did not serve an objective aim and it contradicted the equal work equal pay principle, as these employees were forced to make additional expenditure elsewhere to secure these benefits for their family members.⁹²

Furthermore, de facto unions or marriages based on religious or customary law are not recognised according to Article 1:30 paragraph 2 Civil Code. This provision prescribes that domestic law only recognises marriages based on civil law. Only persons of different sexes, who are of full age pursuant to Article 1:31 Civil Code, may engage in marriage. With the enactment of this provision a discriminatory measure has been eliminated.⁹³ In this manner the Civil Code partially complies with what is stated in paragraph 17 of General Recommendation no. 21 and Article 16 Women's Convention. In paragraph 17 it is pointed out that:

(...) many countries in their legal systems provide for the rights and responsibilities of married partners by relying on the application of common law principles, religious or customary law, rather than by complying with the principles contained in the Convention. These variations in law and practice relating to marriage have wide-ranging consequences for women, invariably restricting their rights to equal status and responsibility within marriage.

Possible limitations of the equal rights and responsibilities of women in marriage are also valid for women in other forms of cohabitation. The Committee further stated in its General Recommendation no. 29 that State-Governments have an explicit obligation to redress the many economic consequences for women of the marital relationship and its possible dissolution, as set out in Article 16 paragraph 1 subsection h Women's Convention.⁹⁴ The State-obligation to ensure the equal access of the spouses 'to the marital property and equal legal capacity to manage it' is mandated.⁹⁵

Despite the legal recognition of only marriage, fact remains that there are many other forms of cohabitation in the Curaçaoan community, particularly de facto unions. This form of cohabitation undermines the position of women as there is no legal protection in such a situation, as it is not explicitly recorded in the Civil Code. Numerous women, regardless of their social status and educational level, live in these de facto relationships, and thus are

90 GHvJ of 22 June 2010, ECLI: NL:OGHNA:2010: BM9524, paras. 4.23-4.27.

91 Ibid., paras. 4.29-4.31.

92 Ibid., paras. 4.34-4.35.

93 It concerns the former distinction in the minimum age to engage in marriage for men and women. Murray e.a. (eds.) 2005, pp. 48-49.

94 CEDAW GR 29 (2013), para. 32.

95 Ibid., para. 38.

unmarried. They are often at the mercy of their men for (financial) support. This is why General Recommendation no. 29 of the Committee is to be commended.

Prior to this, the Committee had already stated in General Recommendation no. 21 that:

Moreover, generally a de facto union is not given legal protection at all. Women living in such relationships should have their equality of status with men both in family life and in the sharing of income and assets protected by law. Such women should share equal rights and responsibilities with men for the care and raising of dependent children or family members.⁹⁶

The burden which a significant part⁹⁷ of the female population living in de facto unions has is disproportionate as they have to bear the responsibility for their households without the legal and financial securities which a marriage provides. In these households the responsibilities are not equally divided among the spouses. Subsequently, the Committee now holds the view that women living in de facto relationships should have equal status with men in family life and in the sharing of income and assets protected by law. This is reiterated in General Recommendation no. 29.⁹⁸

A few protective measures for people living in these relationships have been provided for in the Curaçaoan Civil Code though. We encounter firstly Article 1:87a Civil Code⁹⁹ and Article 1:408b Civil Code. The former concerns the investment clause between spouses and the latter the right to petition for alimony in the break-up of a de facto relationship. In addition, Article 4:30b Civil Code, which ensures the rights of the surviving spouse of a de facto union to usufruct of the house and other goods where his/her life companion has died, have to be mentioned. Article 6:108 Civil Code regulates the payments of indemnification to the surviving spouse, by a third party who was accountable for the death of the life companion. The surviving spouse can claim this in the case where he/she was greatly dependent on the income of the deceased and he/she has encountered major detriment from the loss. The surviving spouse ought to have had a family life with the deceased. Lastly, Article 7:236 Civil Code ensures the equal right to rent a living space by people who have been living in a de facto relationship for over ten years. Through this provision the rental rights and obligations¹⁰⁰ of married couples are considered to be equally applicable to couples in de facto unions. Considering the impact and the importance of Article 1:408b and Article 4:30b Civil Code, additional remarks on their scope follow later in this chapter.

96 CEDAW GR 21 (1994), para. 36.

97 In the year 2010 a total of 874 marriages and 393 divorces were registered. For the year 2011 this was respectively 859 and 396. See *Statistical Yearbook Curaçao 2011* (Central Bureau of Statistics Curaçao), Willemstad December 2012, p. 38; www.cbs.cw, last visited on 19 April 2015.

98 CEDAW GR 29 (2013), paras. 30-31.

99 Article 1:87a Civil Code concerns the doctrine on the profits of investment between spouses. Article 1:87 Civil Code regulates this issue between married spouses. It is dealt with in Art. 1:87a for spouses living in de facto unions. See Asser/De Boer 2010, no. 235a-235g.

100 These are set out in Art. 7:233-7:235 Civil Code.

§ 10.5.1 *Minimum age for marriage*

The other aspect set out in Article 16 paragraph 2 Women's Convention and General Recommendation no. 21,¹⁰¹ is the State-obligation to exclude child marriage by the stipulation of a minimum age for marriage in the national legislation. The legislature complied with this obligation; Article 1:31 paragraph 1 Civil Code stipulates that both persons who want to marry have to be at least 18 years old. In an exceptional case, an underage person(s) should be at least 16 years old to engage in marriage. This thus specifies an ultimate minimum age of marriage. The age limitation for marriage is, however, not valid in a case where the woman, i.e. girl, is pregnant or she has already given birth to a child. In those exceptional cases underage persons may engage in marriage. Moreover, the Minister of Justice has the authority to overrule the age limitation in Article 1:31 paragraph 1 Civil Code for compelling reasons. In conformity with Article 1:35 Civil Code, the underage person ought to have the permission of his/her parents or guardian.¹⁰² Every person older than 18 is free to engage in marriage with whomsoever he/she wants, as long as it is a person of the opposite sex, he/she is not already married or there is not an incestuous relationship as stipulated in Article 1:41 Civil Code.¹⁰³

§ 10.5.2 *Marriages of convenience (sham marriages)*

Demographic changes related to (interregional) migration are very common. Marriages between locals and migrants, particularly between local men and '*Latinas*', is a way by which these changes takes place. In many cases these unions are not based on mutual affection between the spouses, but on motives of convenience, for (social, financial and economic) security, for a residency permit or for Dutch nationality on the part of the migrant.¹⁰⁴

As a restriction the former Antillean¹⁰⁵ legislature introduced and maintained, following the Netherlands, the possibility of terminating marriages of convenience. Legal instruments under Article 1:53 paragraph 3 and Article 1:71a Civil Code regulate the authority of the Public Prosecution Service¹⁰⁶ to lay aside or issue a decree of annulment of a marriage which had the objective to obtain a residency permit, as this qualifies as an act against the public order.¹⁰⁷

Another restriction is laid down in Article 1:44 subsection h Civil Code which prescribes the document(s) that ought to be presented by the foreigner for the celebration of

101 CEDAW GR 21 (1994), para. 36.

102 Article 1:31 paras. 2 and 3 Civil Code; Wortmann & Van Duijvendijk-Band 2012, pp. 37-45.

103 Based on Art. 1:33 Civil Code, the interpretation is that same sex marriage and polygamy are not permitted in Curaçao.

104 Art. 1:50, Art. 1:53 and Art. 1:71a Civil Code mention explicitly the phenomenon of 'marriages of convenience' and the possibilities to lay aside or nullify these marriages.

105 This phenomenon was also registered in Aruba. For an elaboration on the challenges Aruba was confronted with, which are also relevant to Curaçao, see Gielen 2008, pp. 113-131.

106 Also other persons, like relatives of the spouses and the relevant civil servant can lay aside or annul a marriage. See Art. 1:51-1:57; Art. 1:69-1:77 Civil Code.

107 In the Netherlands a separate act to tackle the phenomenon of marriages of convenience has been adopted since 1994 (Stb. 1994, no. 405). It arose from the policies on admission of foreigners. For more information on the motives for the laying aside and annulment of marriages in the Netherlands, see Asser/De Boer 2012, no. 146-152, 175a; Wortmann & Van Duijvendijk-Brand 2012, pp. 47-52; Pitlo/Van der Burght & Doek 2002, pp. 70-84.

the marriage. A declaration issued by the Minister of Justice on the (temporary) residency permit of the foreigner is imperative. In the Dutch case of *Schijnhuwelijk* the sham nature of the marriage was used by the former husband to abrogate the financial consequences bound to the dissolution of the marriage. The Supreme Court of Justice determined that, despite the allegation of the former husband that it was a marriage of convenience in order to acquire a residency permit, it resulted in a union which formed the ground for the alimony obligation of the spouses towards each other after its termination. Considering that the marriage was not nullified, the former husband was obliged to provide alimony to his former wife.¹⁰⁸

In response to sham marriages and their consequences in cases of termination by the husband, the legislature introduced a specific provision in Article 1:152 Civil Code. Considering the possible legal and social implications of this provision on the financial position of (foreign) divorced women, an extensive analysis follows in § 10.6.1.

§ 10.6 Aspects of divorce law

Prior to the reform of Book 1 of the Civil Code in 2001 the provisions regarding divorce and the dissolution of marriage were very conservative and outdated. Divorce, i.e. dissolution of a marriage, was almost (legally) impossible. Two constructions were often applied by people to terminate their marriages, namely (1) the blame construction¹⁰⁹ and (2) the detour construction¹¹⁰ in the Netherlands.¹¹¹ Based on Article 171 in conjunction with Article 258 Civil Code (old)¹¹² divorce could only be obtained on a specific mentioned ground, like adultery. The rules¹¹³ on the dissolution of a marriage as constituted in Book 1 of the Civil Code of 2001 are modern and liberal provisions. An exhaustive list of the grounds for termination of a marriage is given in Article 1:149 Civil Code.¹¹⁴ In conformity with Dutch legislation, the former Netherlands Antilles acknowledged the permanent breakdown of the marriage as the only common ground for the formal termination of a marriage, as stipulated in Article 1:151 Civil Code. These rules are still enforced domestically.

Furthermore, only one of the parties can petition for divorce, following Article 1:150 paragraph 1 Civil Code; thus, consensus between the spouses on a divorce (petition) is not compulsorily required. Concerning this ground, the Supreme Court of Justice decided in

108 HR 1 February 2002, NJ 2002, no. 171.

109 This construction, locally known as the 'big deceit', was based on the phenomenon where one of the spouses would admit 'adultery' or another ground under Art. 1:258 para. 4 Civil Code (old). The problem with this construction lay in the alimony provision, Art. 1:274 Civil Code (old), which often was for the benefit of the spouse who filed for divorce, which in many cases was the wife. The one who admitted adultery, who was often the husband, obtained an obligation to provide for his former wife for the rest of his life. For an elaboration on the Dutch practice, see Asser/De Boer 2010, no. 584-596a.

110 People migrated to the Netherlands to obtain dissolution of their marriage based on the ground of the breakdown of the marriage and returned afterwards. The court's ruling was subsequently registered and executed in the former Netherlands Antilles pursuant to Art. 40 Charter.

111 De Boer 2000, pp. 278-279; De Hondt 2007 (a), pp. 107-121; Maris 1999, pp. 115-116.

112 The grounds formulated in Art. 1:258 para. 4 Civil Code were life threatening injuries or maltreatment, inflicted by one of the spouses on the other.

113 Article 1:149-1:152 Civil Code.

114 The four ways to terminate a marriage are: (1) the death of one the spouses, (2) a suspicion of death which has been established through a decision, (3) a divorce or (4) the dissolution of the marriage after separation. The divorce law of the Netherlands acknowledges a fifth ground, namely the conversion of a marriage into a registered partnership. Pitlo/van der Burght & Doek 2002, pp. 441-447.

the *Duurzame ontwrichting* case of 1997 that if a spouse brings forward a claim that it is impossible to cohabit with the other spouse, the Court may assume that there are serious indications of a permanent breakdown of the marriage.¹¹⁵ This means that the facts on which an individual spouse can apply for divorce are quite extensive. Yet, in cases of consensus both spouses can enter a petition for termination of the marriage based on the ground of permanent breakdown of the marriage.¹¹⁶

Despite this 'freedom', the actual termination of the marriage is bound by some limitations locally. Article 1:150 paragraph 2 Civil Code stipulates that if there are underage children involved, the dissolution based on a petition of one of the spouses is not granted against the wishes of the other spouse, unless the spouses have been continuously living apart for at least three years.¹¹⁷ Thus, the conditions which a sole petitioner has to take into account are (1) whether there are underage children involved, (2) and if his or her spouse opposes the divorce. If the situation complies with these two conditions the divorce will not be granted, despite the fact that the relationship has permanently broken down, unless the spouses have been (3) effectively separated for more than three years. In paragraph 3 of Article 1:150 Civil Code it is stated that this period may be shortened, if the other spouse has misbehaved himself/herself in such a manner that the petitioner cannot be expected to continue the marriage.

At first glance one may conclude that, with the enactment of this provision, the legislature did not make any gender-based distinction, at least not directly, in the rights of the spouses to obtain a divorce. It complies with that which is stipulated in Article 16 paragraph 1 sub c Women's Convention. Spouses have the same rights in regard to the grounds for divorce. Yet, a closer look shows that such equality of rights and responsibilities does not really exist as it is stipulated that the spouses are not free to terminate their marriage when they want to. If they have children and the other spouse objects to the divorce, the spouse will be tied to an unhappy union until all the children come of age. That may cause a heavy burden and prolong an undesirable situation for the spouses and the children. This provision was formulated by the legislature with the objective to protect the children and as a prevention mechanism against rash divorces.¹¹⁸ It can limit disproportionately the freedom of the spouse, particularly women, to terminate the marriage.

The only solution for the spouse is to separate from his or her spouse for a period of at least three years consecutively. To accomplish this, the spouse has to have sufficient economical means. As men enjoy in general higher incomes than women, compliance with this condition would effectively in many cases be much harder for the wife than for the husband.¹¹⁹ This can result in an obligation to pay alimony to the wife who is unable to provide for her own maintenance, particularly in cases where children are involved.

Spouses have the obligation to maintain and support each other, their household and children, during the marriage.¹²⁰ Pursuant to Article 1:156 paragraph 1 Civil Code an obligation to pay alimony after a divorce exists for a spouse, when it is evident that the other

115 HR 6 December 1996, NJ 1997, no. 189 (*Duurzame ontwrichting*).

116 Article 1:154 Civil Code; Murray e.a. (eds.) 2005, pp. 75-76.

117 The period of three years is derived from the period stipulated for a divorce after legal separation following Art. 1:179 Civil Code.

118 Murray e.a. (eds.) 2005, pp. 79-80.

119 Freeman 2012, pp. 425-427.

120 This obligation is based on Art. 1:81 and Art. 1:84 Civil Code.

spouse is unable to provide for his or her own maintenance. The latter has, however, to submit a petition about this. The duration of time in which the first spouse is bound to this obligation is set out in Article 1:156 paragraphs 3 to 6 Civil Code. This obligation exists even in cases of marriages of convenience which have not been nullified, as previously mentioned. The obligation to provide financially for a former spouse terminates when he/she engages again in marriage or in a form of cohabitation which is equivalent to marriage.¹²¹ This is one of the reasons why the Committee recommends that States achieve equality concerning property rights on divorce. The State-Government has in this context, inter alia, the obligation to value 'the non-financial contribution of women in the marital property subject to division' and 'post-dissolution spousal payment' to provide for equality of financial outcome.¹²²

If you take the social perceptions and ideas about marriage, family and children that persist in the Curaçaoan society into consideration, you note that women are the ones more affected by the conditions set out in the subsequent legal provisions, as they are the primary carers of the children and in many cases the sole carers. As a first argument to substantiate this contention, I can say that local women consider marriage to be an important institution and, secondly, it provides them with a higher social status and certain social and financial security. And thirdly, women tend in general to let the interests of their children prevail above their own (needs). Accordingly, they will stay in the marriage for the sake of the children.

Nevertheless, an increase in divorce cases has been registered.¹²³ Thus, it seemed imperative for the Executive and the legislature to address the financial consequences of divorce in conformity with the views of the Committee, which considers, inter alia, the substantial non-financial contribution of women during their marriage.

§ 10.6.1 *Particular provision in the divorce law*

In the divorce law, Article 1:152 Civil Code has been incorporated as a legal instrument to minimise the implications of the alimony obligation of the spouses towards each other. The reasoning for this lies in the social phenomenon whereby many local men engage in marriage with foreign women, and presumably many are 'victims' of these 'malicious' and 'vicious' women. The provision is a protection measure for men. What the legislature 'absentmindedly' neglected to take into consideration was the responsibility of local men for their actions and decisions, and that they had a free choice to choose a spouse and enter into marriage like women, under Article 16 paragraph b Women's Convention. Men obtained a legal instrument that they could misuse rather easily. With the invocation of this legal measure by irresponsible men, many women, both local and migrant, might be left without much protection and (financial) security after the marriage.

Much criticism can be voiced against its introduction and enforcement as it is founded merely on a male perspective. Its consequences on the position of women are not taken into account. The provision greatly contradicts the State's obligation to ensure that there are no

121 Article 1:160 Civil Code.

122 Freeman 2012, pp. 432-435; CEDAW GR 29 (2013), paras. 45-47.

123 In 2009 the rate of divorce was 49%, in 2010 45% and in 2011 46.1% of all the marriages in the respective year. See 'Statistical Yearbook Curaçao 2011' (Central Bureau of Statistics Curaçao), Willemstad December 2012, p. 38.

links between the grounds of divorce and financial consequences of divorce. The Committee stipulates that States should eliminate all provisions which give husbands the opportunity to avoid their (financial) obligations towards their wives. In this regard the Committee recommends that the (non)financial contribution of the wife to the family economy be taken into account.¹²⁴

Article 1:152 paragraph 1 implies that the proprietary effects of the marriage can be limited or precluded by one of the spouses in a case where the marriage had a duration of less than five years, no children were born during the marriage and the spouse entered into marriage as a result of undue influence. The spouse who suffers detriment as a consequence of the undue influence on which the marriage was concluded is most probably the party who submits a petition to the Court. De facto, the following grounds have to be taken into account in a case where this legal measure is enforced, namely (1) the duration of the union, (2) there are no children of the marriage, and (3) more importantly that the marriage came into being as a result of undue influence. The Court has the scope here to determine, based on the submitted facts, whether one of the spouses entered into marriage under false pretences or something similar. This is contrary to what the Committee has stipulated in its relevant recommendation. According to paragraph 45 of General Recommendation no. 29, 'the guiding principles should be that the economic advantages and disadvantages to the relationship and its dissolution should be borne equally by both parties.' Paragraph 46 mandates further that:

States parties are obliged to provide, upon divorce and/or separation, for equality between the parties in the division of all property accumulated during the marriage. State parties should recognise the value of indirect, including non-financial contribution with regard to the acquisition of property acquired during the marriage.

Article 1:92a Civil Code makes matters worse as it stipulates that, in cases of termination of the marriage due to the death of one of the spouses and where the three abovementioned grounds are present, a third party, who has a direct interest, can submit a petition for the limitation or preclusion of the proprietary effects of the marriage to the Court. In these cases Article 4:54 Civil Code applies, which prescribes that the third party has up until one year after the death of the spouse or having obtained knowledge of (one of the three) the grounds to do so. The children or relatives of the deceased are often the ones who will apply this provision as in these cases they have a tendency to consider that the surviving spouse had exercised undue influence and that he/she had misled the deceased and not the other way around.¹²⁵

It was with the enactment of Article 4:43 paragraph 1 Civil Code in 2012¹²⁶ that endless cases between family members concerning the inheritance can now be avoided. The provision prescribes that a will cannot be objected to, in the case of annulment based on undue influence, particularly in the family scene.¹²⁷ This is entirely in conformity with the Convention and General Recommendation no. 29 that stipulates that disinheritance of the

124 CEDAW GR 21 (1994), para. 32; CEDAW GR 29 (2013), paras. 39-40.

125 The burden of proof to establish the contrary lies with the spouse, i.e. wife, in accordance with the regime of Art. 7:176 Civil Code. This is stipulated in Art. 1:92a para. 2 Civil Code.

126 P.B. 2011, no. 68 in conjunction with P.B. 2011, no. 70.

127 Explanatory Memorandum to the national ordinance on Succession and Gift, 2010, 3608, no. 3, p. 34.

surviving spouse is prohibited and laws related to the making of wills that provide equal rights to men and women as testators, heirs and beneficiaries should be in place, which is the case here.¹²⁸

§ 10.6.2 *Legal separation*

For people who could not obtain the dissolution of their marriage in the former Netherlands Antilles, legal separation offered a solution. Article 171 subsection b Civil Code (old) entailed the termination of certain legal effects of the marriage, while the marriage remained formally in effect. Legal separation was often used as an obstacle to prevent a spouse from obtaining his or her freedom. It was considered to be a dead end; a means to maintain a person against his/her will in an unwanted union, as a punishment for the failure of the marriage.¹²⁹

Separation is currently provided for in Article 1:168 Civil Code. Despite the fact that it does not provide a real solution for failed marriages, it was not eliminated from Book 1 of the Civil Code. In many cases legal separation is requested for religious and financial reasons. I presume, following the Dutch system, that the previous characteristic of this measure has changed as it had become a preparatory (temporary) instrument towards the real dissolution of the marriage.¹³⁰

The regime of Article 1:151 Civil Code, the permanent breakdown of the marriage, forms the ground for the application of legal separation. The spouses remain effectively married yet the obligation to live together is discontinued. Furthermore, the division of joint matrimonial property enters into force. As prescribed in Article 1:169 Civil Code, a married couple can obtain legal separation on the same exhaustive grounds as a divorce. After a period of three years of separation, a divorce may follow upon request.¹³¹ The period can be shortened if the other spouse is guilty of misbehaviour, and when one cannot expect from the other spouse continuation of the marriage, pursuant to Article 1:179 paragraph 2 Civil Code. Divorce may be requested in the first place, as long as the request is submitted by both spouses.¹³² The alimony obligation prescribed in Article 1:157 Civil Code is accordingly applicable in cases of legal separation. This obligation terminates with the dissolution of the marriage, following Article 1:169 Civil Code.

§ 10.6.3 *Break-up in de facto relationships*

Many local women live in de facto relationships, although general legal instruments in regard to the termination of these relationships are not incorporated in Book 1 of the Civil Code. The provisions on financial security after termination of marriage are not applicable for de facto relationships, yet this is explicitly mandated by the Committee.¹³³ Nevertheless, the legislature provides some security to people in these non-marital relationships.

128 CEDAW GR 29 (2013), paras. 52-53.

129 Asser/De Boer 2010, no. 667-687; Pitlo/Van der Burght & Doek 2002, p. 443.

130 Pitlo/Van der Burght & Doek 2002, pp. 443, 459; Murray e.a. (eds.) 2005, p. 83.

131 Article 1:179 Civil Code.

132 Article 1:181 Civil Code.

133 CEDAW GR 21 (1994), para. 18; CEDAW GR 29 (2013) paras. 30-31.

The new provision is to be found in Article 1:408b Civil Code. This article specifies that a person who has been living for a long time in a common law relationship and whose relationship terminates can approach the Court with a request for alimony. Through this provision financial protection may be provided to many people, particularly women, at the moment of termination of the *de facto* relationship. The provisions on alimony for former spouses are equally applicable based on the following criteria. It should concern a long-established relationship, where termination obliged the former spouse to contribute to the maintenance of his/her former life-partner. The Court is authorised to direct which kind of support is reasonable, taking all the relevant circumstances into consideration. It looks at circumstances such as the duration of the relationship, whether there are (underage) children involved and the roles of the former life-partners within the relationship. Furthermore, the alimony obligation pursuant to Article 1:157 Civil Code is accordingly applicable.

The concept of 'living together as being married' also includes cases where one of the spouses is still married to another person.¹³⁴ According to Article 1:160 Civil Code the obligation of a spouse towards his or her former spouse to pay alimony terminates when the latter enters a new relationship that qualifies as 'living together as being married'. In a case of 2001 the Supreme Court of Justice affirmed this approach and stated that as long it cannot be proved that a former spouse is in a new relationship with another person which qualifies as marriage, her/his alimony claim towards his or her former life-companion persists.¹³⁵ Following this approach, the law of succession contains additional protection for the life-companion through Article 4:30b Civil Code. This provision prescribes that in the case of *de facto* unions the surviving spouse of a deceased is also entitled to some sort of inheritance. Subsequently, the Court can decide that the Articles applicable to married couples in these cases are equally applicable to him/her. It considers amongst other things the use of the house and the furniture for a period of nine months, or the establishment of usufruct on them and other goods benefiting the surviving spouse, by the heirs.¹³⁶

The abovementioned criteria under Article 1:408b Civil Code are valid. However, contrary to Article 1:408b Civil Code the legislature did not use the term 'long-term relationship', yet it prescribed in Article 4:30b Civil Code that the spouses should have been living together for over 10 years. In the case where the deceased was still married to another person, his/her widow together with his/her life-companion will inherit.¹³⁷

These provisions may provide some relief to the situation of women whose *de facto* relationships come to an end after many years of cohabiting. Yet, the high threshold that is incorporated in the measure will prevent many women, particularly those of the lower social class, from applying under it. As stated by Kocken in his contribution on the distance between citizens and the law in the former Netherlands Antilles, i.e. Curaçao, for the proper functioning of the legal order, the legal illiteracy among local people, particularly women, as a result of many factors such as the language situation, low levels of education and the availability of information on law, hampers the adequate working of the legal order and the accessibility of the Court.¹³⁸

134 Murray e.a. (eds.) 2005, p. 160.

135 HR 13 July 2001, ECLI:NL:HR:2001:ZC3603.

136 It concerns Art. 4:28-4:30a Civil Code.

137 Explanatory Memorandum to the national ordinance on Succession and Gift, 2010, no. 3608, no. 3, pp. 25-26.

138 Kocken 2004, pp. 65-72; see also Freeman 2012, p. 426.

§ 10.7 The law of parentage

The reform on the law of parentage in the former Netherlands Antilles, i.e. Curaçao, occurred many years after the reform in the Netherlands.¹³⁹ It establishes and regulates the relationship between next of kin, where both the legal as well as the biological aspects are taken into account.¹⁴⁰ The establishment of parentage is important for aspects like the establishment of family name, inheritance, parental authority and contact between the parent(s) and the child.

The point of departure for parentage as constituted in Article 1:199b Civil Code is that every person is entitled to know from whom he or she is descended. This knowledge can be established through a DNA test. The forced cooperation to this of the next of kin of a deceased putative biological father is also possible.¹⁴¹ The legal relationship between the mother of the child and the child is still unquestionable and undeniable. Parentage between the mother and the child is established at birth based on the '*mater semper certa est*' principle.¹⁴² The mother is also the woman who has adopted a child.¹⁴³

The situation is different for the father of a child as paternity is not automatically established by the birth of the child, but is based on a presumption. And as a result of this, the distinction between legitimate and illegitimate children remained for many decades a common practice in the family law of the former Netherlands Antilles. Marriage and consequently the legal position of children born in wedlock were seen as (socially) of a higher standard. Children born out of wedlock were termed illegitimate¹⁴⁴ and as a consequence they obtained less protection from the law. Change came by virtue of the *Marckx v Belgium* case of 1979.

Currently, following Article 1:199 Civil Code paternity is established either by marriage, within 306 days after the dissolution of the marriage as a consequence of the death of the husband, by recognition, by adoption and by judicial establishment of paternity.¹⁴⁵ The first mentioned possibility is the easiest way whereby legal paternity can be established. Whether the husband of the mother is or is not the begetter of the child is not relevant. With the marriage between the (biological) father and the mother at the time of childbirth paternity is automatically established.¹⁴⁶ The only possibility for denial of paternity established by

139 The main reform of the family law of the Netherlands came dated from 1970. Many subjects in Book 1 of the Civil Code afterwards underwent further reforms. See e.g. the Acts on parentage of 1998 (Stb. 1997, no. 722), joint parental authority of 1995 (Stb. 1995, no. 240) and of 1997 (Stb. 1997, no. 506). For extensive elaborations on the (old) law of parentage of the Netherlands, consider Asser/De Boer 2010, no. 810-886j; Hidma e.a. 1982, pp. 61-91.

140 Article 1:197 Civil Code.

141 GHvJ of 28 October 2005, AR 148/00 – H.105/01 (*H. v Erven W.*).

142 Prior to the enactment of the Act of 1947 (Stb. 1947, no. H 232) the mother had to recognise her child born out of wedlock for the establishment of parentage in the Netherlands. See Asser/ De Boer 2010, no. 689-691; Jeppesen-De Boer 2008 (a), p. 46; Vonk 2009, pp. 119-121.

143 Article 1:198 Civil Code.

144 This terminology, like many others such as 'natural child', has been eradicated from the current legislation, as it upheld an unjustified differentiation among and stereotyping of children. See Pitlo/ van der Burght & Doek 2002, p. 469.

145 Asser/De Boer 2010, no. 689-701; De Hondt 2002, pp. 29-54; Wortmann & Van Duijvendijk-Brand 2012, pp. 192-195; Vonk 2009, pp. 121-129.

146 Article 1:199 para. a Civil Code.

marriage, is in the case where the husband is proved not to be the begetter through the procedures stipulated in Articles 1:200 to 1:202 Civil Code.¹⁴⁷

The legislature even made it possible for an adult¹⁴⁸ child to dispute the paternity of the husband of his mother within the given period of five years after the adult child has become aware of the possibility that the husband is not his or her biological father.¹⁴⁹ In the *Ontkenning-termijn* case of 2007 a man wanted to dispute the paternity of his deceased legal father, so that he could establish the paternity of his biological father. In doing so, he would have had a claim on the inheritance of the latter. The legitimate son of the putative biological father, as the interested party and heir, disputed this. The Court decided that the applicant did not comply with the period mentioned in the provision for the submission of a request for denial of paternity as he had had, for many years, knowledge that his legal father was not his biological father. Furthermore, the son of the deceased had an interest in the denial of the paternity of his deceased legal father.¹⁵⁰

In Curaçao statistics show that a third of all newborns are born out of wedlock.¹⁵¹ In correlation with the premise that the child has the right to know from whom it has descended, another legal measure on the establishment of paternity has recently been enacted. In Article 1:207 Civil Code the compulsory judicial establishment of paternity is instituted.¹⁵² Considering the importance of this legal measure, further examination follows in § 10.8. In short, the relationship between a child and its biological father can be established both voluntarily as well as compulsorily; and with paternity comes the responsibility of the father towards his offspring.

It is generally known and accepted that the equal responsibilities which parents have towards their children are no longer bound up with their marital status. Parents are biologically and legally related to their offspring and thus they are responsible for them regardless of their relationship. This is emphasised by the Committee in paragraph 20 of its General Recommendation no. 21. In this Recommendation it is stated that:

The shared rights and responsibilities enunciated in the Convention should be enforced at law and as appropriate through legal concepts of guardianship, wardship, trusteeship and adoption. States parties should ensure that by their laws both parents, regardless of their marital status and whether they live with their children or not, share equal rights and responsibilities for their children.

Considering the point of the focus of this section of the thesis, additional remarks are made below on the possibilities of the establishment of the relationship between the father and his child born out of wedlock, through recognition and the judicial identification of paternity and the responsibility and the role of the mother herein. With the establishment of paternity comes better comprehension of the concept of the sharing of equal parental rights.

147 Paternity established through marriage can be disputed, i.e. denied, by the father, the mother and also the child through the possibilities formulated in Art. 1:200 Civil Code. The strictness of the conditions attached to this petition is correlated to the person who submits it. The Court is the competent authority to pronounce a decision on these petitions. Asser/De Boer 2010, no. 702-714; Pitlo/Van der Burght & Doek 2002, pp. 470-472.

148 If it regards a minor child, he/she has five years after coming of age to enter a petition.

149 Article 1:200 para. 6 Civil Code.

150 GHvJ of 20 February 2007, EJ 112/06 – HAR 229/06.

151 Daily newspaper '*Amigoe*', 17 April 2013, p. 4; www.cbs.cw, last visited on 19 April 2015.

152 P.B. 2011, no. 56.

§ 10.7.1 *Issues on recognition by the father, i.e. the begetter*¹⁵³

It is generally known that a significant number of children¹⁵⁴ in the former Netherlands Antilles born out of wedlock were not recognised by their fathers. These children did not have any legal parentage relationship with their begetters, and their family on the father's side. Many of the begetters were and are married¹⁵⁵ men. At a certain point it became commonly accepted that a married man, who had procreated a child out of wedlock, could recognise it, in a case where family life based on Article 8 ECHR was established. This was explicitly recognised by the judiciary, despite the prohibition¹⁵⁶ formulated in Article 330 paragraph 1, subsection b Civil Code (old). Illegitimate children, who were officially not recognised by their biological fathers (i.e. begetter), had a weaker legal status; a situation that had to be adjusted after the *Marckx v Belgium* case.¹⁵⁷ This case concerned the granting of equal rights to the recognised child in comparison with the child born within marriage, particularly in relation to its mother and her family.

In the Antillean situation, the rights and position of the illegitimate child were often denied and suppressed by the interests of the wife and the other legitimate children of the father. The old Antillean law, including a distinction between illegitimate and legitimate children, upheld an unjustifiable unequal treatment of children. Many considered that the rights and the interests of the traditional marriage and the child born in wedlock prevailed and had to be protected against the possible claims of illegitimate children. Yet, following the *Marckx v Belgium* case, the Court granted in the *Burnet v Jacoba* case in 1982¹⁵⁸ equal inheritance rights to the recognised children of the deceased father with his children born within marriage.

Furthermore, as a result of the *Marckx v Belgium* case¹⁵⁹ and case-law of the Supreme Court of Justice, legislation was enacted in 1985¹⁶⁰ and 1988¹⁶¹ granting recognised children born out of wedlock an equal position with children born in wedlock. The position of unrecognised children remained weaker as the law offered less protection to them. This

153 In the new family law a distinction is made between the biological father and the begetter. The broader concept of 'biological father' includes by definition 'the begetter'. The begetter is the man who by a natural sexual act has procreated the child, while a biological father can also be an (un)known sperm donor. Between the sperm donor and the child (and its mother) there does not necessarily exist any (family) relationship. Asser/De Boer 2010, no. 693.

154 It is estimated that from the annual number of newborn children, 25% were born in wedlock, 50% were recognised and 25% remained fatherless. See Explanatory Memorandum to the national ordinance on judicial establishment of paternity 2009/2010, no. 3510, no. 3, p. 2. Figures for 2011 show that approximately 33% of all children are born out of wedlock. Daily newspaper 'Amigoe', 17 April 2013, p. 4; visit www.cbs.cw.

155 In this sense is meant the legally recognised institution of marriage and not de facto unions (common-law marriages).

156 Asser/De Boer 2010, no. 729; Duinkerken & Loth (eds.) 1997, pp. 274-276; HR 10 November 1989, NJ 1990, no. 450.

157 Judgment of 13 June 1979, Appl. no. 6833/74 (*Marckx v Belgium*).

158 GHvJ of 14 December 1982, no. 253, in: TAR 1983, pp. 30-34 (*Burnet v Jacoba*).

159 For a short assessment of the impact of this decision on the then Antillean law, see Van der Plank 1983, pp. 71-75.

160 The ordinance of 1985 concerned adaptations of the Civil Code eliminating the distinction between legitimate and illegitimate parentage in succession law (P.B. 1985, no. 117).

161 This concerned the adaptation of Art. 480 Civil Code (old) where the right of a natural child to receive an immediate sum as an inheritance is guaranteed. P.B. 1988, no. 32.

became evident in the *Djaoen v Leito* cases,¹⁶² where the Courts did not find the distinction between legitimate children and unrecognised children who had a 'family life' with their deceased fathers in regard to their inheritance rights to be in contradiction with the equality principle enshrined in Article 14 ECHR and Article 26 ICCPR.

The following issue, which is noteworthy, is sham recognition of children of migrant women by Antillean men, with the objective to provide them with a permit of admission and residency and/or attainment of Dutch nationality.¹⁶³ This resulted in many socio-economic and cultural challenges for society.

The last issue on recognition was the possibility for the mother to deny the paternity of her former husband. A child, who is born after a divorce and within 306 days after the dissolution of the marriage, could obtain the name of its biological father who had recognised it, with the objective to deny the paternity of the former husband of the mother, if there existed family life between the child's biological father in accordance with Article 8 ECHR, without an obligation of the parents to engage in marriage.¹⁶⁴ Denial of paternity could also be accomplished by the mother, without a divorce, despite the many limitations on the application of this measure through Articles 302 to 306 Civil Code (old).

§ 10.7.2 *Legal ground of recognition*

Family law has extensive regulation on the establishment of paternity by voluntary recognition, to be found in Articles 1:203 to 1:206 Civil Code. As a rule, children are often recognised by their begetter, yet recognition by another man, who is not the biological father (begetter), is not excluded either.¹⁶⁵ The recognition is effective from the moment it is registered, as it lacks retroactive force. The grounds for invalidating such recognition are mentioned in Article 1:204 Civil Code.

In some cases¹⁶⁶ the approval of the mother or the child is required. The mother can object to the recognition by withholding her approval. However, in these cases the approval requirement can be replaced by a decision of the Court, unless damage to the interests of the mother or the child by the recognition can be proved. This approach has been confirmed in the *Yousef v The Netherlands* case, where the withholding by the mother of approval for recognition by the biological father (begetter), had far-reaching consequences. After the death of the mother the biological father attempted to recognise the child and to have it live with him after the child had been placed in the custody of the mother's brother after her death. The European Court of Human Rights considered, by balancing the interests of the parties involved, that the rights and the interests of the child were better served if the child

162 GEA of the Netherlands Antilles (Curaçao) of 11 May 1987, in: TAR-Justicia 1987, no. 4, pp. 196-198; GHVJ of 22 November 1988, ECLI:NL:OGHNAA1988:AD0510, NJ 1989, no. 566 (*Djaoen v Leito*).

163 Asser/De Boer 2010, no. 80-80a, 720.

164 HR 17 September 1993, NJ 1994, no. 373; GEA of the Netherlands Antilles (Curaçao) of 29 July 1999, in: TAR-Justicia 2000, no. 1, pp. 46-48.

165 This aspect seems to be relevant in a case where the decision of recognition is reversible or voidable. Asser/De Boer 2010, no. 715-718; De Hondt 2002, pp. 33- 46; Wortmann & Van Duijvendijk-Brand 2012, pp. 195-199.

166 Where the child is younger than 12, only the approval of the mother is required. If the child is between the ages of 12 and 16, the permission of both the child and its mother is required. For children older than 16, only their approval is required. However, every form of approval can be replaced by a decision of the Court.

remained in its current family, as the recognition by the father would have a great impact on the life and well-being of the child.¹⁶⁷

One additional requirement has to be fulfilled in cases of the withholding of recognition though: the man must prove that he is the begetter of the child, while the existence of family life between the begetter and the child is not required.¹⁶⁸ It seems that in many cases the Court has a tendency to grant approval to the father, when the mother opposes recognition by him. The possible existence of family life, in accordance with Article 8 ECHR, between the biological father and the child is crucial in these cases. This approach is clarified through the following case-law of the Common Court of Appeal of the former Netherlands Antilles and Aruba. It concerned a case where the mother withheld her permission from the biological father to recognise his child. The mother's objection was related to her illegal status, as she was afraid that she would lose her child in a possible deportation. The Court of Appeal decided, considering the decisions of the Supreme Court of Justice on the matter that the approval could be granted to the father as this would not affect the interest, i.e. authority, of the mother and furthermore it would be in the best interests of the child.¹⁶⁹

Also very interesting is the provision set out in Article 1:204 paragraph 1 subsection e Civil Code. According to this provision a recognition is invalid if it is performed after the passing of the statutory period stipulated for the registration of a birth,¹⁷⁰ unless the man is proved to be the biological father of the child or there exists a close relationship between the child and its supposed father, thus family life has been established between these two parties. This had already been recognised in 1989 by the Supreme Court of Justice in a Dutch case where a separated man had built a family life with his child from a previous relationship in accordance with Article 8 paragraph 2 ECHR. The Dutch law which prohibited the recognition of a child by a married, i.e. separated, man was considered to be in breach of the family life enshrined in the European Convention in the case where there exists family life between the child and its father.¹⁷¹

Contrary to the situation in the Netherlands,¹⁷² recognition by a married man is not legally forbidden in Curaçao. Thus, a married man is allowed to recognise his child born out of wedlock prior to the expiration of the statutory period of registration of a child. Furthermore, recognition afterwards is also allowed if it has been proved that he is the biological father of the child or a lasting relationship has been established between them, pursuant to Article 1:204 paragraph 1 subsection e Civil Code; i.e. where there is family life according to Article 8 ECHR between the father and the child.¹⁷³ Regardless of the relationship between the parents and the child, the child can be recognised and cared for by its (biological) father (begetter) at all times, taking the exceptions mentioned in Article 1:204

167 Judgment of 5 November 2002, Appl. no. 33711/96 (*Yousef v The Netherlands*).

168 Article 1:204 para. 3 Civil Code; see Asser/De Boer 2010, no. 730-731a.

169 GHvJ of 4 November 2008, LjN: BH6217; see also GHvJ of 10 February 2009, LjN: BH8742.

170 This period is five days after the birth of the child as stipulated in Art. 1:19e para. 6 Civil Code.

171 HR 10 November 1989, NJ 1989, no. 450.

172 According to Art. 1:204 para. 1 subsection e Civil Code of the Netherlands a married man is not allowed to recognise a child born out of wedlock, unless it is established by the Court that there is some family life between the child and its father or the relationship that exists or existed between the man and the mother of the child is reasonably comparable with a marriage. In this sense it is implicitly recognised that the interests of the child weigh more than those of the current wife of the man. Pitlo/Van der Burght & Doek 2002, p. 475; De Hondt 2002, p. 37.

173 Murray e.a. (eds.) 2005, pp. 93-94.

Civil Code into consideration. This provision marks a significant improvement in the recognition and protection of the rights of the child concerning its father and his family from the father's side, considering that many children are born out of wedlock.

Many begetters have a tendency to establish, through recognition, parentage with their children born out of wedlock. The parties¹⁷⁴ involved also have the possibility to address the Court with a petition to declare void a recognition in the case in which it becomes clear that the father is not the biological father of the child pursuant to Article 1:205 Civil Code. In accordance with Article 1:205 paragraph 3 Civil Code the mother or the legal father of the child has to enter a petition within a year after the effects of the undue influence ceased or the threat, deceit or mistake on which the recognition was based, was discovered. The child, in its turn, can nullify the recognition within five years from when it gained knowledge of the possibility that the man is not his/her biological father. In a case where it concerns a minor child, he/she can invoke this provision five years after coming of age, following Article 1:205 paragraph 4 Civil Code. With the exception of the time limit, the possibility of the child to nullify the recognition is extensive.

Lastly, the Public Prosecution Service also has the authority to petition the Court to nullify recognition in a case of possible violation of public order.¹⁷⁵ This legal measure has been introduced as an instrument against the phenomenon of sham recognition. The recognition of children of foreign women by local men, with the objective to provide residency permits, social security or Dutch nationality to these children, was used inappropriately and irresponsibly for many years.¹⁷⁶ To redress this problem several provisions were introduced in inter alia the revised Kingdom's Act on Dutch nationality.¹⁷⁷ It also became evident that additional provisions had to be incorporated in the Civil Code to address this issue further.

§ 10.8 Background of the introduction of judicial establishment of paternity and its legal foundation

The issue of the judicial identification of paternity remained a sensitive one. Despite the contribution of technology and the progressive attitude of the Women's Development Centre (SEDA) many people, including the legislature, remained hesitant towards the introduction of specific provisions on the matter. It was impossible to appeal against a begetter's responsibility towards his offspring.¹⁷⁸ The legal measure made inroads indirectly into the legal system of the former Netherlands Antilles through the case-law of the Supreme Court of Justice¹⁷⁹ and of the European Court of Human Rights. In the *DNA en bewijs van verwekkerschap* case of 2000, for instance, the Supreme Court of Justice affirmed that the performance of a DNA test as mandated by the district court and followed by the Court of Appeal, based on a request of the mother of a child, for the determination of the paternity of the defendant, was justified. It stipulated that it was quite evident that, based on the presented

174 The parties are the mother, the father and the child. See Art. 1:205 para. 1 Civil Code.

175 Art. 1:205 para. 2 Civil Code.

176 This phenomenon was also noted in the Netherlands. Consider Pitlo/Van der Burght & Doek 2002, p. 477.

177 Consider e.g. Arts. 4 and 5 Kingdom's Act on the Dutch nationality. This Act of 1984 (Stb. 1984, no. 628) was most recently amended in 2010. See the amendment of 17 June 2010 (Stb. 2010, no. 242) in conjunction with that of 7 July 2010 (Stb. 2010, no. 339); De Groot 2009, pp. 443-449.

178 De Boer 2000, pp. 280-283; Maris 1999, p. 122; Sijmonsma 1999, p. 338.

179 For a short appreciation of four cases, see De Hondt 2007 (a), pp. 116-121.

facts and evidence, regardless of whether the parties had intercourse or not, the defendant was presumably the begetter of the child. The mandated DNA test which entailed a violation of the physical integrity of the man was justified under the presented conditions.¹⁸⁰ Through the results of the test it was established that the man was indeed the biological father of the child, and presumably the begetter. Consequently, the Supreme Court of Justice determined his paternity afterwards, based on the results of the test.¹⁸¹

In the *Mikulic v Croatia* case of 2002¹⁸² the European Court of Human Rights found that when the presumed begetter refused to undergo a DNA test by which his parentage of the applicant could have been determined and the domestic law did not provide the necessary effective means,

(...) that under such a system the interests of the individual seeking the establishment of paternity must be secured when paternity could not be established by means of DNA testing ... The Court found that the procedure available did not strike a fair balance between the rights of the applicant to have her uncertainty as to her personal identity eliminated without unnecessary delay and that of her supposed father not to undergo DNA test.¹⁸³

On the other hand the European Court of Human Rights established in the *Jäggi v Switzerland* case of 2006¹⁸⁴ that the interest of a person to discover his parentage does not disappear with the years, nor with the death of the presumed biological father. So, the argument of legal certainty is not enough to prevent the applicant from discovering his parentage as this was his right to private life guaranteed in Article 8 ECHR.

The Common Court of Justice of the Netherlands Antilles and Aruba in its turn provided some relief through its decisions redressing the lacuna. For instance, in a couple of decisions in 2009, and in anticipation of the enforcement of the ruling on the compulsory identification of paternity, the Court of Appeal stipulated that paternity could be established through the application of Articles 8 and 14 ECHR, in the case where the begetter was still alive.¹⁸⁵ Thus, this implied the possibility of the extra-legal establishment of paternity based on international law and case-law. However, in one case where the putative begetter had already died, the Court refused to decide on the establishment of paternity as this would imply important legal and political choices that had to be attended to by the legislature. The Court stated that it was up to the legislature to address this matter and to adopt the required legislation.¹⁸⁶

180 HR 22 September 2000, NJ 2001, no. 647. For a local case on DNA test for the establishment of paternity, see GHvJ of 6 September 2011, LjN: BT7587.

181 HR 11 October 2002, J@actueel 2002, no. 17 (*Gerechtelijke vaststelling vaderschap*).

182 Judgment of 7 February 2002, Appl. No. 53176 (*Mikulic v Croatia*).

183 In the judgment of 13 February 2003, Appl. no. 42326/98 (*Odièvre v France*), where a birth mother gave her newborn up for adoption, and the identity of the mother was kept secret, the Court considered that the State did make a balance between the interests involved, which were the right of a person to know its personal origin, the choice of a natural parent, the family ties and the rights of the adoptive parent. So, the claim of the applicant to know the identity of her biological mother was dismissed as it did not constitute a violation of Art. 8 ECHR.

184 Judgment of 13 July 2006, Appl. no. 58757 (*Jäggi v Switzerland*).

185 GHvJ of 12 May 2009, LjN: B14776; GHvJ of 16 July 2009, LjN: B6235.

186 GHvJ of 12 May 2009, LjN: B14776, para. 2.12

With the legal measure of the judicial identification of paternity a reluctant father could be forced to accept his parentage of a child. This measure came into effect in 2012,¹⁸⁷ after many years of debates and discussions. These debates are clearly visible in the next section.¹⁸⁸

§ 10.8.1 *The view of the Executive on the law on the judicial establishment of paternity*

In the Explanatory Memorandum on the law on the judicial establishment of paternity, it is acknowledged that the process for the introduction of law was initiated in 1995 due to the efforts of the Women's Development Centre (SEDA).¹⁸⁹ The legislature opted not to include this piece of legislation in the revised Book 1 of the Civil Code of the former Netherlands Antilles in 2001. The then underlying arguments related to legal certainty, the social sensitivity of the topic and the deeply rooted moral and religious beliefs and perceptions within society. At that point in time many people, including the then Minister of Justice, thought that the Antillean society¹⁹⁰ was not ready for its implementation, as the interests of the parties involved, especially in regard to inheritance, did not coincide.¹⁹¹ With the new law these interests were taken into account. Consequently, a rather interesting provision was introduced on the protection of the inheritance rights of the wife and the legitimate children in cases of judicial establishment of the paternity of a deceased begetter. More comments on the uniqueness of this provision¹⁹² follow below.

The point of departure was, however, that every child has the right to know its biological father and that the latter should carry responsibility for the procreation of the child together with its mother, regardless of the relationship between the parents. The introduction of the compulsory establishment of paternity was therefore wholly necessary, considering the social and cultural reality of society. Furthermore, the lack of such a measure implied a violation of the fundamental rights of the child such as the right to private life formulated in Article 8 ECHR and its right to equal treatment based on birth.¹⁹³ The societal situation also contradicted the obligations set out in Article 16 paragraph f Women's Convention, where it is stipulated that both parents are equally responsible for the upbringing and education of the child.

187 P.B. 2011, no. 56 in conjunction with P.B. 2011, no. 69.

188 It should be noted that the urgency to adopt this legislative bill came from the Women's Development Centre (SEDA) and it was assisted by Prof. J de Boer, a member of the Common Court of the former Netherlands Antilles and Aruba. See also De Boer 2007 (a), pp. 157-181.

189 *Pensa Global, Aktua Lokal: Dos ana (1994-1995) "zorgcontract"* Sentro pa Desaroyo di Hende Muhe (SEDA) ku Gobiernu Insular di Kòrsou I Programa 1996 (no date).

190 Here one ought to consider in particular the situation within Curaçao as it was the biggest island within the constellation of the former Netherlands Antilles. Furthermore, the Women's Centre (SEDA) was an organisation established and operating in Curaçao.

191 Explanatory Memorandum to the national ordinance on judicial establishment of paternity 2009/2010, 3510, no. 3, p. 1.

192 Art. 1:207a para. 1 Civil Code.

193 In this regard, the non-discrimination norms as formulated in Art. 14 ECHR, Art. 1 Protocol No. 12 ECHR and Art. 26 ICCPR. No link is made with the equal rights in family matters as stated in Art. 16 Women's Convention in which it is stated that both parents are equally responsible for the upbringing of their children, regardless of their marital status.

Without the introduction of this measure many fatherless children¹⁹⁴ were unequally treated. The mothers were fully and solely responsible for their education. The begetter had an obligation to provide for the minor child up until the child came of age, after a request by the mother submitted to the Court. The period during which the request could be made expired however five years after the child's birth, pursuant to Article 338 Civil Code (old).¹⁹⁵ This was considered to be discrimination by the Court of Appeal of the former Netherlands Antilles and Aruba in 1994 as this different treatment between children based on their status of birth entailed a breach of Article 26 ICCPR.¹⁹⁶ Subsequently, most of the arguments against the introduction of the measure of the judicial establishment of paternity were eventually dismissed.¹⁹⁷

Initially, the Antillean Executive expected that with the introduction of the law more fathers would become responsible for the upbringing of their children and that they would share their responsibilities with the mothers. The Advisory Board pointed out in its turn that with the enactment of the law direct governmental policy on the subject of responsible parenthood also had to be developed and implemented.¹⁹⁸ This view was further emphasised during the debates in the Antillean Parliament on the (social) necessity for the introduction of this legal measure. An effective and targeted approach through policies and financial support to NGOs was seen by many representatives as completely necessary to address the social phenomenon of fatherless children.¹⁹⁹ Thus, the sole introduction of legal measures included in the Civil Code was not considered to be the solution for this social problem.²⁰⁰

In its Memorandum of amendment the Executive of Curaçao admitted that the legal measure provided only a slight contribution to the problem, as directed attention on sustainable prevention and education on topics like unwanted pregnancy and responsible parenthood were required. In this regard, several NGOs obtained financial aid from the Executive to support a consciousness-raising process.²⁰¹

I agree with this view as the simple introduction of legal measures does not sustain a change in mindset, beliefs and perceptions on the responsibilities and role of both fathers and mothers in society. Policies directed towards the elimination of harmful social and cultural patterns of conduct, which affect adversely the position of parents, their mutual relationship and their relationship with their children, have to be further developed and effectuated as mandated by Article 5 Women's Convention and General Recommendation no. 29.²⁰² Based on this position, extensive attention is paid to the governmental policies and the role of NGOs in Chapter 8 of this thesis. The introduction of this legal measure cannot be seen as the immediate solution for the above-mentioned phenomenon. Besides, much

194 By 'fatherless children' I mean children who are not recognised by their fathers. These fathers do not contribute (financially and emotionally) to the education of these children and/or establish a family life (relationship) with them.

195 This provision known as '*de vaderschapsactie*' is enforced by (Art. 17) P.B. 1916, no. 27.

196 GHVJ of 28 June 1994, NJ 1995, no. 135.

197 Explanatory Memorandum to the national ordinance on judicial establishment of paternity 2009/2010, 3510, no. 3, pp. 2-4.

198 *Ibid.*, p. 6; Advisory Board of the Netherlands Antilles 2009, RvA no. RA/14-09-LV, p. 3.

199 Parliamentary proceedings 2009/2010, 3510, no. 4.

200 *Ibid.*, pp. 2-3.

201 Memorandum of amendment of the Government of Curaçao to the national ordinance on judicial establishment of paternity, 2010/2011, 3510, no. 5, pp. 1, 5.

202 CEDAW GR no. 29 (2013), para. 18.

more is required than just the enactment of legal measures to address the responsibilities of parents, particularly fathers, towards the education of their children.

§ 10.8.2 *Legal provision on judicial establishment of paternity*

Articles 1:207 to 1:208 Civil Code regulate the issue of the compulsory establishment of paternity. According to Article 1:207 Civil Code, paternity is established as a result of the fact that the man with the highest probability is the begetter of the child or he, as the life partner of the mother, has consented to an act that could have caused the procreation of the child as a result. A weighing of the interests of the parties involved is not prescribed, as the consent to such an act or the actual deed is sufficient.²⁰³ The application therefore can be submitted to the Court by the mother, unless the child is older than 12, the child itself or the Guardianship Council. In the last case the child should be younger than 12. If the mother opposes the submission by the Guardianship Council, it will not be admitted in Court. This implies a further protection of the interests and private life of the mother in comparison with that of the child and its begetter.

The Advisory Board, prior to the introduction of this legal measure, had advised against this implication as it implies a further protection of the interests of the mother in comparison with those of the father, which can cause a violation of the equality and family life norms as stipulated in Article 8 and Article 14 ECHR. It suggested that the Guardianship Council should have the competence to admit a request, even against the wishes of the mother.²⁰⁴

Paternity can also be judicially established in cases where the alleged father has already died. This aspect is extensively regulated in Article 1:207a Civil Code. The impediment grounds are set out in Article 1:207 paragraph 2 Civil Code.²⁰⁵ Article 1:207 paragraph 4 Civil Code confirms that the establishment of paternity by the judiciary has retroactive force from the moment of the child's birth. Thus, it concerns involuntary measures, which force the alleged father to cooperate in the establishment of his paternity with a child born out of wedlock. The child does not automatically obtain the family name of the begetter as a result.

Article 1:5d Civil Code prescribes that a child older than 16 can submit a request to the Court for an alteration of its surname simultaneously with the establishment of the paternity. The Court's decision will uphold in those cases the determination of paternity and the new surname of the child. Also, as mandated by Article 1:5h Civil Code, the parents have the option to declare simultaneously with the decision on the establishment of paternity that they want to make a choice about the surname.²⁰⁶

Nowadays, with the assistance of technology, paternity can easily be established through a DNA test. Thus, an application submitted by an interested party, such as the mother, does not constitute a violation of the right of privacy and physical integrity of the biological father (begetter), as has been pointed out in case-law.²⁰⁷ Even in cases where the putative biological father refuses to cooperate with the establishment of paternity through a DNA test, based on

203 Vonk 2009, p. 127; HR 11 October 2002, J@actueel 2002, no. 17; HR 25 March 2005, NJ 2005, no. 313.

204 Advisory Board of the Netherlands Antilles 2009, RvA no. RA/14-09-LV, p. 2.

205 These grounds are where the child already has a father, or it concerns the impediment for marriage related to 'blood shame' as formulated in Art. 1:41 Civil Code; Explanatory Memorandum to the national ordinance on judicial establishment of paternity, 2009/2010, 3510, no. 3, p. 8.

206 P.B. 2011, no. 56.

207 HR 22 September 2000, NJ 2001, no. 647 (*DNA en bewijs van verwekkerschap*).

the allegation that this would imply a violation of his privacy and physical integrity, paternity can be established through presented facts and such a test. In this context the interests of the mother and the child outweigh the rights of the supposedly biological father, in conformity with the *Onderhoudsactie verwekker* case of 2011 of the Supreme Court of Justice. With the establishment of paternity the liability for maintenance of the child is determined.²⁰⁸

The right of the mother herein may be found in different premises, namely in the right of her child to know its father and in sharing the responsibility of the upbringing and education of the child with its father, as stipulated in Article 16 Women's Convention.²⁰⁹

§ 10.8.3 *Judicial establishment of paternity and the (inheritance) rights of the wife and legitimate children*

With the introduction of the measure on the judicial establishment of paternity, an interesting provision was established. Article 1:207a Civil Code is a protection measure for the shares of the wife and the legitimate children in the inheritance of the begetter after his death. The provision stipulates that in a case where the begetter dies prior to the judicial establishment of paternity, and the intestate succession of the child born out of wedlock becomes an impediment for his wife and the legitimate children, the inheritance claim of this child can be limited. A request has to be submitted to the Court. As a matter of fact, paragraph 1 is a serious limitation on the inheritance claims, i.e. rights, of a child born out of wedlock and a significant protection for the interests of the widow and the legitimate children of the presumed begetter, as the inheritance claims of the illegitimate child can mean a particular harshness for the widow.

The underlying reason for the introduction of this measure lay in the argument for the protection of the share in the ownership of property acquired during marriage by the labour of the wife and the family life that existed between the father and his other children and their inheritance.²¹⁰ In short, this provision is very much in conformity with paragraph 53 of General Recommendation no. 29, which stipulates that the State-Government has an obligation to introduce laws on intestate succession in compliance with the Women's Convention. In this regard it is forbidden to introduce measures which can have, as a result, the (partial) disinheritance of the widow.²¹¹

The application of this measure may however be at the expense of the rights of the child born out of wedlock and the right to (financial) support of its mother, if it concerns an underage child or an adult child pursuing further studies. Thus, the implications of this legal measure cannot be considered as being (financially) favourable for the child born out of wedlock and its mother, as with it the child only obtains acknowledgement about the person from whom it is descended. It does not lead to an automatic right to the family name of the father, a contribution to the child's living expenses for the mother,²¹² or a share in the inheritance by the child. The right to (financial) support for the living expenses of the child for the mother from the begetter is actually regulated in Articles 1:394 – 1:395b Civil Code.

208 HR 8 April 2011, LJN: BQ0479.

209 See e.g. CEDAW GR 21 (1994), para. 9.

210 The Explanatory Memorandum to the national ordinance on judicial establishment of paternity, 2009/2010, 3510, no. 3, pp. 7-9.

211 This was initially mandated in CEDAW GR 21 (1994), para. 34.

212 This is mandated in CEDAW GR 21 (1994), para. 19.

Furthermore, Article 1:207a paragraph 2 Civil Code prescribes that in a case where the petition for the judicial identification of paternity is entered more than five years after the death of the presumed begetter and a widow or children are left behind, the possibility for an intestate succession by this fatherless child is nil. The child loses in these cases every right on the inheritance of the father or any further financial support²¹³ after the death of its biological father.

In regard to a scrutiny of the limitation of the inheritance rights of these children derived from Article 1:207a Civil Code, in comparison with the provisions of Article 1 Protocol No. 12 ECHR and the interests as formulated in Article 8 ECHR, it is stated by the Executive that no discrimination has been shown here. Children born out of wedlock are not considered to be unequally treated in comparison with the widow and particularly with the legitimate children of the begetter. As Article 8 ECHR and Article 1 Protocol No. 12 ECHR do not uphold provisions on inheritance, no inequality is revealed.²¹⁴

Based on, inter alia, the *Mazurak v France* case²¹⁵ the Executive considered that the regulation is based on equal treatment and on an exception for a specific situation. It upholds a justified distinction, whereby the rights of the widow and the other children are protected. According to the Executive, the provision provides enough margins to the judiciary to weigh the interests of the parties involved. In this sense, I have to consider the cases of *H v Erven W*.²¹⁶ In the first case in 2005, it was established by the Court of First Instance, through a forced DNA test between the descendants of W and H, that the deceased W was in all probability the biological father of H. Prior to this procedure H had also requested, besides the establishment of paternity, recognition by W. However, the Court of Appeal in The Hague decided in 2008, based on the decision of the Court of First Instance, that the issue of recognition had not been addressed. The initial decision concerned the establishment of the results of a DNA test. The Court of Appeal decided, based on the scope of the European Convention on Human Rights that the Convention provided for entitlement on 'determination of the legal relationship between a child born out of wedlock and his natural father'. Consequently, the establishment of paternity leads to the establishment of parentage and it is up to the Antillean law to regulate the legal consequences of that. In the final decision in 2010 the Court of Appeal of the Netherlands Antilles and Aruba found that all the legal effects, based on the establishment of the paternity of the testator, in accordance with the Antillean law of succession, are binding, thus they had to be enforced. In this sense, H as the son of the testator was entitled to his statutory share, despite the fact that he was not mentioned in the will of his biological father.

Also, the Advisory Board considered Article 1:207a Civil Code to be reasonable and justifiable starting from the legal security of the widow and the other children.²¹⁷ I dispute

213 This exclusion is not applicable in the case of other family members such as a brother. The heirs are specified under intestacy rules. Explanatory Memorandum to the national ordinance on judicial establishment of paternity, 2009/2010, 3510, no. 3, p. 10.

214 Ibid.

215 Judgment of 13 June 1979, Appl. no. 6833/74 (*Marckx v Belgium*); Judgment of 1 May 2000, Appl. no. 34406/97 (*Mazurak v France*).

216 GHvJ of 28 October 2005, AR 148/00 - H.105/01 (*H v Erven W 1*); Gerechtshof 's-Gravenhage of 20 February 2008, LJN: BC6649 (*H. v Erven W 2*); GHvJ of 6 June 2010, LJN: BP1157 (*H. v Erven W 3*).

217 The Explanatory Memorandum to the national ordinance on judicial establishment of paternity, 2009/2010, 3510, no. 3, pp. 10-11; Advisory Board of the Netherlands Antilles 2009, RvA no. RA/14-09-LV, p. 4.

this line of reasoning by just taking the equal rights of the child, as formulated in Article 2 ICRC, into consideration. The point of departure should be that every child, despite the relationship it is born into, has the right to a relationship with its (biological) father and his (financial) support. In the case where the (biological) father did not act responsibly and provide in the course of its life for the child born out of wedlock, this does not mean that after his death the child should lose any rights to its inheritance or that the rights have to be limited and/or weighed against those of his siblings, because as with the establishment of paternity, the equal position between the children and their father is undeniably established. This criticism on the ruling is founded on the *Notaris Postma* case of the Supreme Court of Justice of 2010.²¹⁸ Inevitably an indirect differentiation is made between the children born in wedlock and those born out of wedlock. It is consequently up to the Court to decide whether the child born out of wedlock will inherit (fully) from his deceased biological father or not.

The position of the fatherless child weakens when the time limitation of five years for entering a request for the establishment of paternity of a deceased father (begetter) is exceeded, in accordance with Article 1:207a paragraph 2 Civil Code. If the legislature wanted to provide some protection to the wife of the deceased, specific provisions could have been incorporated in the law of succession which covered this aspect. On the other hand, Article 4:35 Civil Code stipulates that in regard to illegitimate children the underage child is entitled to an immediate sum as an inheritance for its upbringing and support. Also, adult children between 18 and 21 years of age are entitled hereto for their support and further studies. This provides some sort of solution to the dilemma.

§ 10.8.4 *The judicial establishment of paternity and the rights of the child and its mother*

Evidently, more consideration was taken of the rights of the wife and the other children than the rights for (financial) support and security of the (minor) child born out of wedlock and its mother. If the mother, or the Guardianship Council in the case of children younger than 12, or the child itself does not submit a request to the Court then the right of the mother to obtain (financial) support, i.e. inheritance, with the heirs of the deceased father diminishes, while the deceased father had a responsibility towards the child, despite his marital status. The newly introduced provision represents an unquestionable improvement in the situation and position of children born out of wedlock, as they obtain hereby certainty about the identity of their father, but it does not *de facto* give an obligation to the (deceased) fathers to provide urgent support for the children and their mothers.

As mandated by the Committee, States have an obligation to ensure that by their laws both parents, regardless of their marital status and whether they live with their children or not, share equal rights and responsibilities regarding their children. Through Article 1:207 Civil Code the relationship between an unwilling begetter and his child can be established, but it does not constitute an immediate claim to (financial) support from the father in the upbringing, i.e. education of that child by the mother or the child itself. This matter is regulated in Article 1:208 Civil Code as it stipulates that, by a decision of the court, if requested, alimony can be granted as a contribution to the child living's expenses and further

218 HR 2 February 2010, LjN: BK6150.

studies as stipulated in Article 1:404 and 1:395a Civil Code.²¹⁹ The mother may also apply other provisions, like Article 1:394 and Article 1:408 to 1:408b Civil Code, which through their implementation requires the father (begetter) to provide (financial) support, regardless of the establishment of paternity.

Pursuant to Article 1:394 and Article 1:408a Civil Code the establishment of paternity, either voluntarily or compulsorily, is however not a requirement. In the Explanatory memorandum to this national ordinance, it is stated by the Antillean Executive that it can be expected that with the implementation of Article 1:207 Civil Code more children will have a father in the future, thus fewer claims will be made upon the public purse for the care of these children.²²⁰

In addition, I have to mention Article 1:408a Civil Code which has been maintained with the objective of providing some (financial) protection and relief to women living in de facto unions. It concerns the obligation of the begetter of a child to pay for the financial costs related to childbirth and the maintenance of the mother during the first six weeks after childbirth. This legal measure is however not sufficient to address the inequality which women experience in these types of relationships when giving birth to their children. The primary aim of the measures is to provide (social and financial) security to the mother of the new born during a certain period, considering the poor social and financial reality of many of them. The legislature did not exclude its incorporation in the law as the situation of many local women is not as favourable in comparison with those living in the Netherlands where the measure has been repealed.²²¹

§ 10.8.5 *An extra-judicial measure: the 'reconocimiento provocado'*²²²

The enacted legal measure on the compulsory determination of paternity in itself does not have a low threshold as, for the establishment of paternity, the submission of a request to the Court is compulsory. The future introduction of a national ordinance on the extra-judicial indication of the putative begetter as formulated by De Boer²²³ (hereafter: the 'De Boer proposal of 2010') is necessary as a support mechanism to mitigate the effects of absentee biological fathers and their irresponsible behaviour towards their children, as single mothers in many cases and for various reasons are (in)voluntarily reluctant to address the Court.²²⁴

Many countries in the Caribbean region have introduced some sort of legal measure to address this problem, such as the '*reconocimiento provocado*'. Where some countries have made it mandatory for single mothers to mention the name of the alleged begetter in the birth certificate of the child, in other countries the putative begetter is obliged to undergo a DNA test for the establishment of paternity if he refuses to recognise the child.

219 This provision came into force in 2012 (P.B. 2011, no. 56).

220 Explanatory Memorandum to the national ordinance on judicial establishment of paternity, 2009/2010, 3510, no. 3, p. 5.

221 Murray e.a. (eds.) 2005, p. 159.

222 This means the 'stimulated, i.e. provoked, recognition' [translation by A.R.].

223 Preliminary draft of a national ordinance on the putative begetter by J de Boer, 15 March 2010. The Women's Development Centre (SEDA) officially presented the 'De Boer proposal 2010' to the Minister of Justice of Curaçao in 2013 to ensure its future enactment. See daily newspaper '*Amigoe*', 26 November 2013, p. 5.

224 Legal illiteracy is one of these reasons. See Parliamentary proceedings 2009/2010, 3510, no. 4, p. 4; Kocken 2004, pp. 65-72.

In the De Boer proposal of 2010 a low threshold method to minimise the amount of fatherless children and the irresponsible behaviour of some men is presented.²²⁵ The proposal considers provisions on the opportunity of the mother to declare under oath and in the presence of a civil servant the name of the begetter within a period of one year after childbirth. The putative begetter has subsequently six weeks to dispute this declaration, which is subsequently laid down in the official records. If he fails to do so within the stipulated time-period or he admits to being the biological father of the child, the recognition of the child will follow, pursuant to draft Article 1:206b. Subsequently, following draft Article 1:206c paragraph 2 the date of the deed of recognition becomes the date for the establishment of paternity.

The draft also sets out the grounds for declining the registration of the deed by the civil servant, based on for instance a presumption of sham recognition.²²⁶ In the case of denial by the putative begetter or the refusal by the civil servant to register the declaration, the mother can always pursue the legal establishment of paternity through the judicial procedure described above.²²⁷

§ 10.9 The meaning of (joint) parental rights

In regard to the issue of parental authority, it must be noted that it had always had a male-oriented point of view, as the Civil Code (old) started out from the term ‘paternal power’. According to the Civil Code of 1868, parental authority rested with the father as the sole figure who upheld parental authority over children even after divorce. As a result of the adaptation of the Civil Code of the former colony of Curaçao in 1904,²²⁸ following the Dutch Children’s Act (Civil Law) of 1901,²²⁹ the mother obtained some authority over her children, as she was up until then seen as a ‘second-class’ parent. The term ‘paternal power’ was replaced by the term ‘parental power’.²³⁰

Despite this amendment, the powers vested in the parents remained with and were exercised by the father. The mother was allowed to exercise parental authority together with the father. Effectively, and in conflict situations, parental power remained with the father.²³¹ A single mother on the other hand could only have guardianship, and not parental power, over her child. She had to establish her affiliation with the child through recognition, like the father. By such recognition, with the permission of the mother, the father became the child’s (supervisory) guardian.²³²

Parental power was related to marriage and termination of a marriage meant automatically the ending of parental power. Only one of the parents, often the mother, obtained legal guardianship over the children in the case of divorce.²³³ The other parent, often the father, became a supervisory guardian in regard to his own children. The legal constructs of parental power and guardianship concerned the same rights and duties for (single) parents

225 Preliminary draft of a national ordinance on the putative begetter by J de Boer, 15 March 2010.

226 Article 1:206c para. 3 de Boer proposal of 2010.

227 Article 1:206e de Boer proposal of 2010.

228 P.B. 1904, no. 4, which was enacted by P.B. 1905, no. 41.

229 For the Dutch situation see Asser/De Boer 2010, no. 810-817; Jeppesen-De Boer 2008 (a), pp. 32-59.

230 Article 1 National ordinance of 1904.

231 Article 349 Civil Code (old); Asser/De Boer 2010, no. 820-820a.

232 Article 328 Civil Code (old).

233 Article 278 Civil Code (old).

towards their children. The difference between these two constructs lay primarily in the fact that parental power was exercised by married couples, while guardianship was exercised by one parent or a third party.

Equality between parents in the exercise of parental authority came into effect in 2001. The aforementioned constructs were removed with the enactment of Article 1:251 Civil Code. The premise became that parent(s) exercise parental authority and third parties exercise guardianship. This amendment complied with Article 16 paragraph 1 subsection d Women's Convention and with General Recommendation no. 21.

In accordance with the then Antillean law joint parental authority was possible within marriage and after divorce, as long as parents expressed their desire for the continuation of joint parental authority. Authorisation by the Court was a statutory requirement for this, pursuant to Article 1:251 paragraph 2 Civil Code. Case-law of the Supreme Court of Justice held that termination of joint parental authority after divorce was unlawful; it conflicted with Article 8 paragraph 2 ECHR.²³⁴ Furthermore, in compliance with Articles 8 and 14 ECHR, the granting of joint parental authority to unmarried couples over their children also became a reality, albeit it required the authorisation of the Court.²³⁵ However, the condition of recognition by the biological father had to be complied with.²³⁶ So, the Civil Code had to be modified further following (inter)national case-law and international law.²³⁷ The Common Court of Appeal of the former Netherlands Antilles and Aruba stipulated in 2009 that allocation of joint parental authority of a child born out of wedlock, but recognised by its father, was admissible based on the advice of the Guardianship Council. The sole parental authority of the father was altered into joint parental authority of the parents considering the best interests of the child.²³⁸

§ 10.9.1 Procedure for the allocation of (joint) parental rights

In the analysis of the legal measure of (joint) parental authority²³⁹ according to Curaçaoan²⁴⁰ law, I had to take paragraphs 9 and 10 of General Recommendation no. 21 into consideration. Parental authority thus concerns the responsibilities that parents have towards their underage children, regardless of their marital status and mutual relationship. Discrimination towards

234 For an elaboration on the case-law of the Supreme Court of Justice on the conditions for joint parental authority after divorce between 1984 and 1995, see Jeppesen-De Boer 2008 (a), pp. 35-37.

235 HR 21 March 1986, NJ 1986, no. 585.

236 Duinkerken & Loth (eds.) 1997, pp. 277-278.

237 In this sense I refer primarily to the influence of the ECHR (Arts. 6, 8 and 14), as it has an enforcement body, namely the European Court of Human Rights, which supervises the application of the provisions according to present-day conditions. For an elaboration on the influence of international law (ECHR and ICRC) on this matter in the Netherlands, see Asser/De Boer 2010, no. 786-839i; Jeppesen-De Boer 2008 (a), pp. 85-107 and 121-127.

238 GHvJ of 6 January 2009, LJN: BH0540.

239 The term 'parental authority' is chosen following Dutch literature. This term describes the powers and duties of parents in regard to their children. It correlates with the Dutch concept of '*ouderlijk gezag*', which is also applicable in the Curaçao legislation. Asser/De Boer 2010; Jeppesen-De Boer 2008 (a); Van Mourik & Nuytinck 2009.

240 For elaborations on this subject according to Dutch legislation, see Dutch literature such as Van Mourik & Nuytinck 2009; Schrama (eds.) 2009 (a); De Hondt 2002; Pitlo/Van der Burgh & Doek 2002; Wortmann & Van Duijvendijk-Brand 2012. For a more in-depth analysis on the subject see Jeppesen-De Boer 2008 (a) and Asser/De Boer 2010.

children based on birth is not permitted. The premise is that parental authority is exercised either by parent(s) or guardian(s), where they act as the legal representatives of the underage child²⁴¹ as the latter is legally incompetent.

Family law initially did not contain a provision on the automatic continuation of joint parental authority after divorce. The request upon which joint custody could be granted by the Court²⁴² meant that the communication and understanding between the parents had to be at least amicable. In the *Gezamenlijk gezag na echtscheiding I* case of 2007 the Court of Appeal held that, despite the fact that the then Aruban law stipulated that joint parental authority after divorce was only possible after a request by the parents, the relationship and communication between the spouses was adequate which permitted joint parental authority as requested by the mother. The father initially objected to this.²⁴³ The Supreme Court of Justice decided afterwards in the *Gezamenlijk gezag na echtscheiding II* case of 2008 that this limitation of parental rights was in conflict with Articles 6 and 8 ECHR.²⁴⁴ Consequently, several important amendments such as continuation of joint parental authority after divorce had to be made to this extensive²⁴⁵ part of Book 1 of the Civil Code. The new rulings were brought into force in 2012.²⁴⁶

The amendment complied with the obligation laid down in paragraph 10 of General Recommendation no. 21, for 'States to ensure that by their laws both parents, regardless of their marital status and whether they live with their children or not, share equal rights and responsibilities for their children'. Parents have, in accordance with Article 1:247 paragraphs 1 and 2 Civil Code, the right and obligation to care for, maintain and educate their underage children and to protect their interests, while physical and mental abuse of children is strictly prohibited.²⁴⁷ Moreover, a parent has an obligation to stimulate the relationship between the child and the other parent, pursuant to Article 1:247 paragraph 3 Civil Code.

Married parents exercise *ipso jure* parental authority. The dissolution of the marriage²⁴⁸ does not imply a *de jure* termination of joint parental authority, unless one of the spouses submits a request to the Court for sole custody in the best interests of the child, following Article 1:251 paragraph 2 in conjunction with Article 1:251a paragraph 1 Civil Code. The Court might in exceptional cases accept such a claim.²⁴⁹ In the case of children born in wedlock, the parents have joint parental authority by law. For single parents, the general

241 Article 1:245 Civil Code; Jeppesen-De Boer 2009, pp. 162-166.

242 Article 1:251 para. 2 Civil Code of 2001 (P.B. 2000, no. 178); Explanatory Memorandum to the national ordinance on the adaptation of the right to parental authority, 2009/2010, 3512, no. 3, p. 1.

243 GHvJ of 20 November 2007, EJ 3486/06 – H.129/07; Murray e.a. (eds.) 2005, p. 109.

244 HR 28 March 2008, LJN: BC 2255. Consider also the Aruban case of 2011, GHvJ of 16 August 2011, LJN: BT 2480.

245 Title 14 of the Civil Code upholds Art. 1:245 - 1:377. Considering the scope of this part of the regulation, only a selection of provisions and the recently introduced amendments will be analysed.

246 The recent amendments regard mainly Art. 1:247, Art. 1:251, Art. 1:251a, Art. 1:253a, Art. 1:253c, Art. 1:253e and Art. 1:377a Civil Code. These amendments came into force in 2012 (P.B. 2011, no. 57); Asser/De Boer 2010, no. 820b-820c.

247 This aspect is emphasised following the international obligations derived from various international human rights conventions. Explanatory Memorandum to the national ordinance on the adaptation of the right to parental authority, 2009/2010, 3512, no. 3, p. 4.

248 In this case the legislature stipulated the dissolution of the marriage other than by death or legal separation.

249 Explanatory Memorandum to the national ordinance on the adaptation of the right to parental authority, 2009/2010, 3512, no. 3, pp. 2, 5; De Hondt 2002, pp. 66-68.

rule is that the mother, by law, exercises sole parental authority.²⁵⁰ She has in this regard a preferential position, whereas the legal father has to submit a request to the Court for (sole) parental authority.²⁵¹ Considering that a significant percentage of children are born to unmarried (single) mothers locally, it is not surprising that the legislature has created in Article 1:252 Civil Code the possibility of joint parental rights for unmarried couples, as long as the mother and the legal father voluntarily submitted a request by agreement and a note to the effect is included in an official register constituted in accordance with Article 1:244 Civil Code.²⁵² This provision provides an instrument that can only be applied by the legal parents of the child, who want to share the responsibilities of the education of the child. Other persons, like the life companion of the single parent, cannot invoke the application of this provision.²⁵³

According to Jeppesen the current discourse in the Netherlands on this area starts out from the point of view that parents should continue to share parental authority in cases of a divorce or a break-up, and even in situations where they do not agree on the allocation of parental authority.²⁵⁴ With the amendment of the domestic legislation, I assume that this point of view is also valid in Curaçao. The domestic law does not make any distinction in the contents of parental authority, whether it is exercised by a single parent or by (un)married couples. For a proper functioning of this legal measure the requirements of adequate and voluntary communication and understanding between the parents are totally necessary. And if these requirements are absent, conflicts will undoubtedly arise. In anticipation of such conflicts, provisions concerning dispute-settlement mechanisms were incorporated in the law.

The legal father, who has never exercised parental authority, can submit a request to the Court and petition for joint or sole parental authority, following Article 1:253c paragraph 1 Civil Code. In this regard, the right of absolute veto by the single mother, obtained from the moment of the birth of the child,²⁵⁵ can be limited. The legal father has to seek redress through the Court, and even in doing so the mother may resist joint parental authority. Also, the mother can submit such a petition.

As a solution in these conflict cases the legislature stipulated that in cases where joint parental authority is possible and one of the (legal) parents refuses to cooperate, the request may only be declined if the Court assesses that such refusal is in the best interests of the child.²⁵⁶ Furthermore, the father can obtain sole parental authority (custody), if the Court estimates that it is in the best interests of the child, following Article 1:253c paragraph 3 Civil Code. Consequently, the mother loses her right to exercise parental authority over the child.

250 Article 1:253b Civil Code.

251 Article 1:253c Civil Code. Considering that this provision constitutes inequality towards the legal father, an elaboration will be given below on the implications of this provision.

252 P.B. 2001, no. 14.

253 Contrary to the situation in Curaçao, shared parental authority between the mother and her life-companion is permitted in the Netherlands. See Art. 1:253t Civil Code; Asser/De Boer 2010, no. 839a-839d; De Hondt 2002, pp. 69-71; Jeppesen-de Boer 2009, pp. 170-171.

254 Jeppesen-De Boer 2008 (a), pp. 6-8.

255 Article 1:253b para. 1 Civil Code.

256 This is regulated in Art. 1:253c para. 2 Civil Code; for an example of a court decision in such a conflict situation, anticipating the enactment of the then new ruling, see the Aruban case GHvJ of 22 September 2009, ECLI:NL:OGHNA:2009:BK0007; see also Explanatory Memorandum to the national ordinance on the adaptation of the right to parental authority, 2009/2010, 3512, no. 3, p. 6.

In sum, the mother, whether she is married or not, has parental authority over her children *ipso jure*. Yet, if it is considered by the Court, after a request by the legal father, that the interests of the child are better served through the exercising of parental authority by him, the mother may lose her (sole) parental rights.

The only case in which the father would easily obtain sole parental authority is in the situation described in Article 1:253c paragraph 4 Civil Code. There it is stipulated that, in cases where there is no provision for parental authority or there is no guardian with parental rights, the request of the father can only be dismissed if there are well-founded reasons which may suggest that the ‘best interests of the child’ may be neglected with the granting of the petition. I note that the legislature has taken a good deal of account of the concept of ‘best interests of the child’ in this piece of legislation as formulated in General Recommendation no. 21. It seems that the actual meaning of the broad concept of ‘the best interests of the child’ as stipulated in the Convention on the Rights of Children²⁵⁷ has also been defined through case-law. In specific cases the interests of the parties involved are weighed against each other. Even the opinion and findings of experts involving the child’s wishes and well-being are taken into consideration by the Court. This is affirmed by the European Court of Human Rights in, inter alia, the *Sahin v Germany* cases.²⁵⁸

§ 10.9.2 *Dispute settlement mechanisms on allocation of parental authority: divorce cases*

Anticipating cases of dispute between parents, whether they are married or not, on the exercising of joint parental rights, provisions on possible solutions have been provided for by the Curaçaoan²⁵⁹ legislature. Joint parental rights remain in place even after a divorce. However, if joint parental authority cannot be continued, Article 1:251a paragraph 1 Civil Code stipulates that the Court may decide, based on a petition either of both parents or one parent, on the termination of joint parental authority, if it is desirable and in the best interests of the child. No other conditions have been put on the request on the allocation of parental authority in divorce disputes, contrary to the situation in Dutch law.

In the Netherlands the request for sole parental authority is bound by two strict criteria: (1) when there exists the unacceptable risk that the child is torn or lost between the parents and where sufficient improvement could not be expected within a reasonable time; (2) the alteration in parental authority is otherwise necessary in the interests of the child.²⁶⁰ The domestic legislation does not include explicitly the ‘torn or lost between the parents’ criterion; it is a leading criterion developed by the Supreme Court of Justice in dispute cases.²⁶¹

According to Asser/De Boer the two criteria are actually on an equal footing.²⁶² So, it is not surprising that Curaçao did not follow the Dutch legislation in this sense and it

257 Article 3 ICRC; Asser/De Boer 2010, no. 813-814b.

258 Judgment of 11 October 2001, NJ 2002, no. 417; judgment of 8 July 2003, Appl. No. 30943/96. For local cases consider e.g. GHvJ of 6 January 2009, LJN: BH0540; GHvJ of 10 August 2010, LJN: BN5656.

259 For an elaboration on the disputes regulation in the Netherlands, see Asser/De Boer 2010, no. 822-822f; Jeppesen-De Boer 2009, pp. 172-181.

260 Article 1:251a para. 1 Civil Code.

261 See e.g. the case of HR 9 July 2010, LJN: BM4301 (*Omgang en gezag*); Jeppesen-De Boer 2008 (a), pp. 42-44.

262 Asser/De Boer 2010, no. 820d-820db.

omitted the incorporation of the first criterion. The Antillean legislature stated that, after consultation with the Common Court of Justice of the former Netherlands Antilles and Aruba, it was considered desirable to have a broader scope for the decline of a request for joint parental authority, contrary to the position adopted by the Netherlands. The underlying reasons for this 'desirability' are, however, not given.²⁶³ Consequently, the Advisory Board pointed out in its advice that this was an insufficient reason. The reasons should have been mentioned and incorporated in the explanatory memorandum.²⁶⁴ The Parliament reiterated this position and it seconded the proposed modifications. In general it was suggested that adequate information should be provided to parents on their parental responsibilities.²⁶⁵

Another subtle difference between the two criteria is incorporated in the second criterion. The Curaçaoan legislature applies the term 'desirable,' whereas the Dutch legislature used the term 'necessary'. This difference has an effect on the protection that is offered to the child and the single parent, which in many cases is the mother as the main carer. The legislature pointed out that, contrary to the situation in the Netherlands, the Court in Curaçao has, with the 'desirable' term a broader margin to allocate sole parental authority after divorce to a single mother, pursuant to Article 1:251a paragraph 1 and also Article 1:253c paragraph 2 Civil Code.²⁶⁶ The mandatory characteristic of the 'necessary' term is moderated in the direction of the more accessible and broader 'desirable' term.

§ 10.9.3 Dispute settlement mechanism regarding allocation of parental authority: break-up cases

In the case of the break-up of a de facto relationship, the exercise of joint parental rights, based on Article 1:252 paragraph 1 Civil Code, remains in place. Article 1:253a paragraph 1 Civil Code gives solutions in cases of disputes between (un)married parents about the allocation of parental authority. Here the Court also has to take the best interests of the child into consideration in its decision after a petition by both parents or by one of them. Both De Hondt and Jeppesen-De Boer remark that the alteration of (joint) parental authority in the Netherlands has proved to be a rather difficult task.²⁶⁷ This would also probably be the case in Curaçao. Nonetheless, the Court has, based on the petition of the parents or of one of them, the authority to adopt a parenting plan on the manner of exercising (joint) parental authority in the case of a break-up or divorce. The plan should contain four conditions²⁶⁸ pursuant to Article 1:253a paragraph 2 Civil Code.

263 Explanatory Memorandum to the national ordinance on the adaptation of the right to parental authority, 2009/2010, 3512, no. 3, p. 5.

264 Advisory Board of the Netherlands Antilles 2009, RvA no. RA/17-09-LV.

265 Parliamentary proceedings 2009/2010, 3512, no. 4.

266 Explanatory Memorandum to the national ordinance on the adaptation of the right to parental authority, 2009/2010, 3512, no. 3, p. 3.

267 De Hondt 2002, p. 73; Jeppesen-De Boer 2009, pp. 159-183.

268 The conditions are: (1) the division of care and responsibility between the parents, together with a temporary prohibition of contact with the child by one parent if this is in the interests of the child, (2) the child's main residence, (3) the manner of providing information about the child and its properties to the other parent, and (4) the manner of providing information to third parties. Jeppesen-De Boer compares the approach towards parental relocation adopted by the Commission on European Family Law (CEFL) with the approach taken in Dutch and Danish law. The author provides, inter alia, information on the regulations and case-law which deal with a child's main residence after divorce according to the general dispute settlement provision formulated in Art. 1:253a Civil Code of the Netherlands. Jeppesen-De Boer (b), pp. 73-82; see also in regard to the second

The high threshold with which the legal father, who has a family-life with the child, is confronted is indisputable. He has to address the Court with a request for the exercise of parental authority, whether it concerns joint or sole parental authority, following Article 1:253c paragraph 1 Civil Code. If it concerns a petition for joint custody and the mother opposes this, then the petition will be rejected if the Court considers it desirable in the best interests of the child.

The scope of this provision, which aimed to regulate the petition for (joint) parental authority of single parents in the interests of the child, is identical with that of Article 1:251a paragraph 1 Civil Code, which addresses the situation of divorced parents. The single father is in this regard not discriminated against in comparison with the divorced father. It is possible, however, that the criterion of desirability in the best interests of the child will be applied and commended more frequently by the Court in the case of single parents than in the case of divorced parents who share joint parental authority over their children.²⁶⁹

If I start off from the point of view that the (legal) parents ought to have shared responsibility for the care, protection and maintenance of their children, as stipulated in paragraph 9 of General Recommendation no. 21, I can partially conclude that the analysed national provisions conflict with the recommendations of the Committee. The parents do not have equal status in regard to exercising and being granted (joint) parental authority, certainly in the case of unmarried couples. The single mother has a preferential position as she is the primary carer, while the father has to submit a petition to the Court to gain this authority. The single mother has a stronger position here; so, people might say that the legal father is being discriminated against. It would have been better if it had been stipulated that, with the determination of paternity particularly through recognition and to a lesser extent through compulsory judicial establishment of paternity, the legal father would obtain joint parental authority with the mother. It would then not be necessary to seek redress in the courts, unless the father could contest paternity effectively. Such a provision would enforce the shared responsibilities of unmarried parents and the principle of granting the parents of children equal status. Yet, on the other hand, in many cases the mother is the main carer and this justifies her stronger position in this regard.

Lastly, Article 1:253e Civil Code prescribes that the acceptance of the petition of a parent under Articles 1:235b, 1:253c and/or 1:253d Civil Code by the Court means the ending of the parental authority of the other parent. However, when the petition concerns joint parental authority, this outcome does not occur.²⁷⁰ With this, the father may limit the parental rights of the mother, while she remains the main carer of the child, particularly in de facto relationships. The real impact and meaning of the introduction of the measures on joint parental authority in the domestic legal system will become clearer in the near future. I would not venture to predict in which direction this will go.

condition the case where the mother entered a petition to move to another country (Switzerland) with her children and this petition was declined by the Court of Appeal of Den Bosch. Her appeal to the Supreme Court was granted, as the Supreme Court weighed all the interests of the parties involved, and not solely those of the children. HR 25 April 2008, LJN: BC5901 (*Zwitserse verhuizing*).

269 Asser/De Boer 2010, no. 822c-822d.

270 The legislature incorporated in the amendment regarding Art. 1:253e Civil Code, which came into force in 2012 (P.B. 2011, no. 57 in conjunction with P.B. 2011, no. 69), had the following phrase: “*Dit gevolg treedt niet in indien de ouders als gevolg van de rechterlijke beslissing met het gezamenlijk gezag zijn belast.*”

§ 10.10 Conclusion

In this chapter I examined whether the inequality experienced by women in many social areas is reflected in the family law of Curaçao. My findings are put in the framework that begins from the human rights-based approach where the domestic family law is based upon the norms and standards enshrined in the Women's Convention. Effectively, I scrutinised a selection of family law provisions comparing them with the Convention to see if there was reason for concern on the protection offered to women, as right-holders in the private domain, or not. In this review the elements of State accountability, the connection with human rights and the non-discrimination elements of the 'PANEL' analysis were used to establish the capacity of the right-holders and the duty-bearer.

The State-obligations enshrined in Article 16 Women's Convention address the equal rights of women in all matters regarding marriage, family issues and properties. As Article 16 Women's Convention has been amplified by several General Recommendations, its application to the eradication of inequality in family law was investigated in correlation with primarily General Recommendations no. 21 and no. 29. Regardless of the family form, legal system, religion and traditions, equal treatment of women according to the Women's Convention should be based on the principles of equality and social justice from a gender-perspective.

Under the scrutiny of the accountability of the State-Government, as duty bearer, for the realisation of gender-sensitive equality in family matters the following became clear. The State-Government, when fulfilling the rights of women through the strengthening of their legal capacities, has an obligation to exclude all gender-based discriminatory provisions and gender-stereotypes in its family law by introducing (legal) measures that redress gender-based inequality. The examination of the selected areas showed that equality has not been accomplished in all areas.

When put in a historical perspective, despite the 2001 reform of the old family law of the former Netherlands Antilles of 1869, which had as its main objectives the accomplishment of equality between men and women, the liberalisation of divorce law and the elimination of the distinction between legitimate and illegitimate children, the then new Antillean family law, which is now the family law of Curaçao, turned out to be a conservative model of the liberal family law of the Netherlands of 1970. It contained only some minor specific local provisions.

Additional revision of the family law was necessary in 2010 and 2012. The law of surnames of 2001, for instance, did not take any proper consideration of the demographic developments in society and international obligations under Article 16 paragraphs d and g Women's Convention. The real change came in 2010, where the free choice of parents in the surname for their children was introduced under Article 1:5 paragraph 1 Civil Code, and Article 1:9 paragraph 1 Civil Code regulates the possibility of spouses to adopt each other's surname in accordance with Article 16 Women's Convention. The question remains though whether men are aware of this legal possibility and if they are willing and able to adopt the last name of their wives in this male-dominated society. Moreover, the law of the surname still exhibits elements which limit and contradict the equal rights of women in the choice of surname of their children and starts from gender-based stereotypes, such as the norm under Article 5i paragraph 2 Civil Code.

Although the family law acknowledges the freedom of people of different sexes to enter marriage under Article 1:30 Civil Code, it remains a very conservative provision. The legislature did not take the opportunity to legally recognise the other cohabitation forms, such as same sex marriages, de facto unions and registered partnerships through which further protection of women and equality could have been accomplished. It was not courageous enough to take a stand on these matters, as religiously-based perceptions and customs still prevail. The inequality in the minimum age of women and men to engage in marriage, as mandated in Article 16 paragraph 2 Women's Convention, has been corrected through Article 1:31 Civil Code though. Also, the social phenomenon of sham marriages is dealt with in Articles 1:53 and 1:71a Civil Code, a way in which marriage was (mis)used to attain other benefits.

The various ways to terminate a marriage are listed in Article 1:149 Civil Code, while the permanent breakdown of marriage forms the general ground for its termination as stipulated in Article 1:151 Civil Code. This correlates with the equal rights of spouses to terminate the union. Although mutual consensus among the spouses is therefore not required, the scope of the provision is limited by three requirements incorporated in Article 1:151 paragraph 2 Civil Code. While the objective of these limitations primarily concerns the protection of the interests of underage children, they bring far-reaching (financial and social) consequences for the rights and position of the wife. Furthermore, they impact negatively on the equal rights of women with men to terminate their marriage freely, rights which were provided for in Article 16 paragraph c Women's Convention.

The limitation of the proprietary effects of marriage for (foreign) women stated in Article 1:152 Civil Code constitute another peculiarity as the Article aims to protect the interests of men against the alimony claims of 'malicious and gold-digging' (foreign) women. The equal rights of women are hereby limited, favouring the men, which is a breach of the obligations ensured in Article 16 paragraph b Women's Convention and General Recommendation no. 29. The legislature started from a male-oriented and gender stereotyped approach, greatly neglecting the rights of (foreign) women. In addition, third parties, particularly family members, can impede these effects of the marriage based on Article 1:92a Civil Code, although the repercussions of its application are limited by the provision created in Article 4:43 paragraph 1 Civil Code.

An innovation where indirectly the position of women is positively affected is enshrined in Article 1:408b Civil Code. People who have been living for a long period in de facto unions have the possibility to apply for alimony through the Court. Considering that in most cases women need financial aid after a separation or break-up in de facto unions, the provision constitutes a high threshold, particularly among (lower class) women who often live or have been living in these relationships, as the Court has to be addressed. Legal illiteracy among (lower class) women and the financial constraints they live under will have an effect on the use of this instrument. Accordingly, I consider that there is an urgent need for the creation of a lower threshold and for an accessible (legal) mechanism to realise and protect their rights.

There are several other provisions which give additional protection to women living in de facto unions, like Article 1:87a Civil Code, Article 6:108 Civil Code and Article 7:236 Civil Code. The most noteworthy provision is Article 4:30b Civil Code which makes it possible for a woman living in this type of union to inherit from her deceased spouse, particularly in regard to remaining in the home for a certain period of time after his death

or establishing a usufruct on the house and the furniture for her use. This is something that has to be applauded.

Concerning the law of parentage I discovered that it addresses issues like the recognition of children and the judicial identification of paternity, which are State obligations under Article 16 paragraph f Women's Convention. The matter of the recognition of a child is regulated in Articles 1:203 to 1:205 Civil Code. As Curaçaoan society has historically acknowledged a relatively high percentage of children born out of wedlock, it meant a major step forward that the inequality based on birth was partially abrogated due to the *Marckx vs Belgium* case of 1979. The equal positioning of children born in wedlock and recognised children born out of wedlock by their (already married) father brought some relief. However, the position of fatherless children remained weak in many aspects. At present, recognition by a married man is legally allowed after the expiration of the statutory period of registration of the child, pursuant to Article 1:204 Civil Code; something which makes an improvement to the legal position of a child. Both the mother and the child obtain herewith some clarity and security about the parentage of the child with its father and on the acceptance by the father of his responsibilities towards his child. The State-Government complied with its obligation enshrined in Article 16 paragraph d Women's Convention in this way.

The legal instrument of judicial establishment of paternity, in its turn, made inroads into the Antillean legal system through the case-law of the Supreme Court of Justice. It entered into force officially in 2012. The necessity for provisions such as Article 1:207 Civil Code was enormous and, as mandated by Article 16 paragraph f Women's Convention and General Recommendation no. 21, both parents should be equally responsible and accountable for their children. This is now guaranteed in the domestic legal system and, furthermore, a mother can ask nowadays for alimony based on Article 1:208 Civil Code. Moreover, Article 1:207a Civil Code provides for the establishment of paternity in cases where an alleged father has died. However, the provision contains a clause that undermines and limits the rights of the unrecognised child to its inheritance and the right of its mother to (financial) support. The legislature made here a choice that affects the child's and its mother's right for support, favouring the rights of the widow and the children born in wedlock, as it considered that the (non)financial contribution of the widow during the marriage had to be protected above all. The fact is that this provision means an indirect unjustified differentiation between children based on birth, particularly in a small community such as Curaçao where often people know who the begetter of the child is.

As the (biological) fathers, i.e. begetters, have a (financial) responsibility towards their children, whether it results from, inter alia, Articles 1:208, 1:394, 1:404 and 1:408 Civil Code, they should be held accountable for the consequences of the procreation of their children. The legislature retained rightly Article 1:408a Civil Code which provides for temporary financial support from the father for the mother of a newborn. Thus, many provisions regulate the responsibility of financial support from fathers towards their children, yet the effective support which mothers receive for their children is often very meagre. The State-Government has therefore an obligation to introduce (legal) measures to address this issue and many other undesirable social phenomena which persist based on harmful gender-perceptions in the private sphere and on the procreation of children.

In spite of the fact that the enactment of rulings such as Article 1:207 Civil Code is to be applauded, they came into force following Dutch law. They were not the results of

the autonomous assessment of the Antillean, i.e. Curaçaoan, State-Government based on the need to address social undesirable phenomena such as unmarried parenthood and illegitimacy. It would have benefited the former Antillean and the Curaçaoan legislatures more if they had taken certain social phenomena more seriously and acted upon them much sooner.

So, following the comments of the Advisory Board, besides legal measures policy directed towards the strengthening of responsible parenthood also has to be developed and put in place by the State-Government as duty bearer. The introduction of additional new rules related to the identification of the putative begetter by the mother in an extra-judicial measure such as the '*reconocimiento provocado*' can contribute to an adequate solution for some of the many social challenges related to the irresponsible attitude of a group of men.

Finally, the exercise of *de jure* joint parental authority, pursuant to Article 1:251 Civil Code, in and outside marriage is now possible; a measure which is in line with General Recommendation no. 21 and the essence of Article 16 Women's Convention. There is no longer any distinction between the parental rights exercised by a single parent or (un) married couple in family law. In cases of conflict, the legislature has created some dispute settlement mechanisms, as stipulated in, inter alia, Article 1:251a Civil Code. Family law does not follow the Dutch law entirely though in regard to the request for sole parental authority as developed by the Supreme Court of Justice. This difference is important for the protection that has to be present for the child and its single parent, who often is the mother.

In short, through the examination of the selected areas, it became clear to me that the legislature had, with the enactment of the selected provisions, acted for the great part in conformity with the obligations enshrined in Article 16 Women's Convention and the General Recommendations. The Court has a prominent role in the overall effectuation and scrutiny of these instruments. Yet, there are still several provisions which do not stand up to scrutiny against the Women's Convention, as they constitute discriminatory gender-based measures and they often (un)consciously start from a male perspective, such as Article 1:152 Civil Code. This also applies to the limitation of parental rights of the woman by the father, while in many cases she is the main carer of the child. Thankfully, the Court has to be addressed by the father for its effectuation and this limitation is only allowed when it is in the best interests of the child as mandated in Article 16 paragraph f Women's Convention. So, I recommend a gender-sensitive review and human rights proofing setting out from the contextual approach of Curaçaoan family law on Article 16 Women's Convention and the soft law of the Committee, through which a gender-perspective in this area in accordance with international human rights norms and standards is included.

Chapter 11

THE CONVENTION'S MECHANISMS AND THE MONITORING BY THE COMMITTEE

§ 11.1 Introduction

Since the enactment of the Women's Convention in the Kingdom in 1991 this State-party has had an obligation to engage in an active and progressive policy on the elimination of the disadvantages experienced by women at country level. The theory of State accountability obligates the State-Government to address the neglect of its duties with regards to respect for women's rights; the State-Government also acquires an obligation to implement legislation and policies for the protection of women. Curaçao (and Sint Maarten) has also been bound by these obligations. This small Caribbean country is responsible and accountable for the violation of the women's rights set out in the Convention, committed by branches of its Government, its governmental agents and even third parties.

The countries within the Kingdom have to report periodically to the supervisory body of the Women's Convention on the status of the realisation of the rights and freedoms under the Women's Convention. Insight on the compliance with the State-reporting obligation and the concluding comments of the Committee on the reports of the former Netherlands Antilles is therefore of great relevance for the determination of the (future) actions which Curaçao has to take in the effectuation of its obligations. In addition to the State-reports the Committee receives information in written reports from NGOs on the status of women in a particular country. The contribution of Antillean, i.e. Curaçaoan, NGOs in the establishment of the degree of realisation of women's rights locally is therefore of extreme importance.

Until 1999 State-reporting was the only instrument which the Committee had in the fulfilment of its supervisory tasks. Since the enactment of the Optional Protocol in 2000 the Committee has been granted the authority to receive and consider individual complaints on alleged violation of women's rights, pursuant to Article 2 Optional Protocol. Furthermore, it also has the authority to conduct inquiries on gross violations of women's human rights in a country that is party to the Convention. Considering the focus of this chapter, I further contemplate the implications and the application of these supervisory instruments of this treaty-based body for local women.

The main questions addressed here are:

What kinds of guidelines are given by the Committee through its concluding observations to the former Netherlands Antilles, i.e. Curaçao, for the ensuring of women's rights?

What is the contribution of the case-law of the Committee for the enhancement of further protection of local women, particularly in regard to the realisation of the rights enshrined in Articles 5 and 16 Women's Convention?

What is the possible meaning of the inquiry procedure conducted by the Committee for the protection of local women?

Considering these questions and many others, the chapter is divided as follows. § 11.2 addresses the reasoning behind the introduction of a Committee for the monitoring of the implementation of the Women's Convention by State-parties. § 11.3 considers the instruments at the disposal of this Committee as established in Articles 17 to 21 Women's Convention and the Optional Protocol. A short elaboration on the procedure for the compilation of the reports of the former Netherlands Antilles, i.e. Curaçao, is given in § 11.4. The reports submitted by this country and the concluding comments of the Committee on these reports follow in § 11.5 to § 11.9. A look is also taken at the shadow report(s) submitted thus far by Antillean, i.e. Curaçaoan, NGOs on the State-reports in § 11.10. The examination of a selection of cases against State-parties by the Committee is undertaken in § 11.11. Subsequently, the merits of the conducted inquiry procedure(s) are set out in § 11.12. The chapter ends with concluding remarks on my findings in § 11.13.

§ 11.2 The supervising Committee to the Women's Convention

It was not the initial intention of the drafters of the Women's Convention to institute a separate commission to be in charge of the supervision of the implementation of the obligations under the Women's Convention by the State-members. The Commission on the Status of Women (CSW) was intended to be in charge of this and to report to the Economic and Social Council of the United Nations on its findings. As a result of, inter alia, the differences in opinion among the members on the independent position of the Commission on the Status of Women in the state report procedure, the General Assembly of the United Nations decided finally that a committee composed of independent experts should be responsible for the monitoring of the implementation of the Convention.¹

The Committee which supervises the implementation of the Women's Convention by the State-parties was instituted through Article 17 Women's Convention. With the adoption of the Women's Convention, 23 'experts of high moral standing and competence in the field covered by the Convention', with due regard to an equitable geographical representation, the different forms of civilisation and principal legal systems, were appointed. The Committee members are appointed² for a period of four years, with a possibility of re-election.³ The authority of the Committee as a quasi-judicial organ is strongly connected to the independence⁴ and expertise of its members and the results of the Committee's work are

1 Jacobs 1994, pp. 294-295; Boerefijn 2012 (a), pp. 476-478.

2 The procedure related to the nomination by the national Governments and the election of these experts by the State-parties is set out in Art. 17 para. 2 to 4 Women's Convention.

3 Article 17 para. 1 Women's Convention; rule 16 Rules of Procedure; Boerefijn 2012 (a), pp. 480-484.

4 The independence and the impartiality of all Committee members to human rights treaties are guaranteed by the Addis Ababa Guidelines of 2012 (UN Doc. HRI/MC/2012), which finds its basis in the provisions of the human rights treaties and the Rules of Procedure established by the supervisory bodies. For a short

primarily formulated in its General Recommendations.⁵ The further functioning of the Committee is laid down in the Rules of Procedure,⁶ as mandated by Article 19 Women's Convention.⁷ Pursuant to Article 21 Women's Convention, the Committee is obliged to report on an annual basis to the General Assembly on its supervising activities. In short, the establishment, the functioning and the authority of the Committee are regulated in Articles 17 to 21 (part V) Women's Convention.⁸

The supervisory machinery of the Women's Convention is copied from that of the Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on Civil and Political Rights,⁹ with the difference that it initially consisted of only the State-reporting obligation. The Committee gives, following Article 21 Women's Convention, in its General Recommendations its general view after its examination of the reports and information submitted to it by the State-parties for a certain period. The other monitoring instruments of the Committee were provided much later on through the enactment of the Optional Protocol.¹⁰

§ 11.2.1 *The background of the Optional Protocol in short*¹¹

The introduction of the Optional Protocol was necessary as the Convention was considered by many as having a weak and ineffective enforcement mechanism in comparison with the mechanisms in the other UN human rights conventions, such as the International Convention on Civil and Political Rights¹² and the Convention on the Elimination of All Forms of Racial Discrimination.¹³ The Committee addressed this matter for the first time during the second World Conference on Human Rights in Vienna of 1993.¹⁴ Afterwards, it adopted a suggestion on a proposal for the Commission on the Status of Women to set up a group of experts to prepare a draft Optional Protocol, a proposal which was accepted by the Economic and Social Council.¹⁵

In anticipation, an independent group of experts came together in Maastricht, the Netherlands, in 1994, and at this meeting a preliminary draft Optional Protocol

assessment of this issue, see Report 'The Independence of UN Human Rights Treaty Body Members', Geneva 2012.

5 The functioning of the Committee depends, however, largely on the human and financial resources that are made available to it by the General Assembly. Boerefijn 2005, pp. 16-20; Boerefijn 2012 (a), pp. 486-487.

6 Annex I to the CEDAW report GA A/56/38. Several rules were amended in 2007 (UN Doc. A/62/38). These rules are also to be found in HRI/GEN/3/Rev.3, pp. 93-126.

7 Boerefijn 2012 (c), pp. 509-512.

8 For extensive elaboration on the scope and working of these provisions, see Freeman, Chinkin & Rudolf (eds.) 2012, pp. 475-526.

9 Consider Arts. 8-16 CERD and Arts. 28-45 ICCPR. For a short comparison see Jacobs 1994, pp. 299-301.

10 The Optional Protocol consists of 21 provisions. GA A/RES/54/4, on: www.un.org/womenwatch/daw/cedaw/protocol/text.htm.

11 For an extensive elaboration on the process on the adoption of the Optional Protocol, see Connors 2012, pp. 607-618.

12 The First Optional Protocol to the ICCPR of 1966 (Trb. 1969, no. 99, Revised Trb. 1978, no. 177).

13 Article 14 CERD.

14 E/CN.6/1996/10, paras. 4, 5.

15 Ibid., paras. 6, 7.

was adopted.¹⁶ With the adoption of the Platform for Action¹⁷ in 1995 a definite request for support for the establishment of a right to petition through an Optional Protocol to the Women's Convention was made. In 1995 the Committee adopted Suggestion no. 7,¹⁸ which contained the relevant elements for the eventual Optional Protocol to the Women's Convention. Various deliberations of a working group and (non)governmental organisations on the draft Optional Protocol followed from 1996 up until 1998.¹⁹ By the end of 1999 the final draft of the protocol was adopted by the General Assembly of the United Nations.²⁰

In accordance with the Optional Protocol the Committee obtained the authority²¹ to adopt its own rules of procedure. Subsequently, it adopted these rulings in 2001 which were last amended in 2008.²² One of the major objectives of the introduction of this Optional Protocol is encouragement for State-parties to implement the Women's Convention more effectively in their domestic legal order. By doing so, they avoid complaints against them, as the communication procedures are initiated by women who perceive that their rights covered by this Convention are being violated by the State.

§ 11.3 Instruments at the disposal of the Committee

The Committee has thus three instruments²³ through which it monitors the implementation of the Convention by State-parties. Through the contemplation of the workings of these instruments it becomes clear whether or not the conditions for the protection and fulfilment of the human rights of women at a local level are supported by the State-parties. The suggestions and recommendations of the Committee and its concluding observations on the periodic State reports and its case-law jointly determine the direction for the creation and effectuation of programmes directed at the development of women. They strengthen the framework from which State and governmental agencies and third parties should start. The general working of these instruments is described below.

§ 11.3.1 State report obligation

The first instrument is grounded in the Convention itself. Article 18 Women's Convention concerns the reporting obligation of the State-parties,²⁴ establishing the tasks formulated in Article 17 Women's Convention. In accordance with this provision a State-party has to inform the Committee one year after the ratification of or accession to the Convention and every four years thereafter, on the progress it has made on the implementation of the Convention. Moreover, State-parties also have an obligation to submit an exceptional report by request

16 'Verslag Expert bijeenkomst Facultatief Protocol VN-Vrouwenverdrag', Vereniging voor Vrouw en Recht Clara Wichman, 15 September 2010, p. 5; see also www.un.org/womenwatch/daw/beijing/beijingdeclaration.html.

17 A/Conf.177/20/Rev.1. Available on www.un.org/womenwatch/daw/beijing/beijingdeclaration.html.

18 UN Doc. A/50/38 (Suggestion no. 7).

19 See e.g. E/CN.6/1996/10; E/CN.6/1997/5.

20 UN Doc. A/RES/54/4.

21 Article 14 Optional Protocol.

22 HRI/GEN/3/Rev.3.

23 There is another instrument set out in Art. 29 Women's Convention. It is the settlement of disputes on the interpretation and implementation of the Women's Convention between State-parties through arbitration. If the dispute is not settled, it can be referred to the International Court of Justice, and not to the Committee.

24 For the procedure on the submission of reports, see Rule 48 Rules of Procedure.

of the Committee whenever the Committee considers this appropriate and necessary. One major concern of this Committee and all the other treaty bodies has been the failure of State-parties to comply with their reporting obligations or to submit their reports on time; this is particularly a failing among small States.²⁵

Specific guidelines²⁶ on the substance and the outline of the reports have been formulated and introduced by the Committee as well. The submission of a combined report as an exception to the non-compliance by States has been allowed by the Committee since 1997. The State reports currently have to comply with the harmonised guidelines of 2009²⁷ which provide a uniform framework for the reporting to all treaty-based bodies. These guidelines include instructions for the compilation of the common core document which is submitted to all monitoring bodies and the treaty-specific document that is presented to the concerned body.²⁸

According to the valid guidelines, the initial reports have to comply with another outline than the subsequent periodical reports. The consultation of NGOs in this process for additional information on the actual situation in a country is permitted.²⁹ The Committee has the authority to make concluding comments on the submitted reports.³⁰ The State-party takes these concluding comments as its starting point for its next report, whereby the progress made during the concerned period has to be mentioned. The concluding comments of the Committee do not have binding force though. The force of these comments is connected with the authority and expertise shown by the Committee.

For the fulfilment of its works and the implementation of the obligation under Article 21 Women's Convention the Committee has set up working groups.³¹ A pre-session working group is responsible for the preparation and formulation of the considerations of the reports. Also, representatives of (inter)national specialised agencies,³² such as NGOs, are allowed to submit written information on the implementation of the obligations stipulated in the Convention. They may even be invited to be present at a meeting of the Committee or at the pre-session working group, regardless of the fact that they may have had an involvement in the compilation of the State report.³³ The reports submitted are subsequently considered by the Committee during a constructive dialogue session between the representatives of the State-party and the Committee members. The examination of the reports closes with the concluding comments of the Committee on the reports submitted, which takes place in a closed session.³⁴

25 For the factors see Boerefijn 2012 (b), p. 491; for a list up until 2009 see CEDAW/C/2009/I/2.

26 The first document on guidelines for the compilation of State-reports on the Women's Convention is of 1996 (CEDAW/C/7/Rev.3). This was replaced by the guidelines for all international human rights treaties incorporated in HRI/GEN/2/Rev.1 and HRI/GEN/2/Rev.1/Add.2. The last revision was in 2009 (HRI/GEN/2/rev.6).

27 The harmonised guidelines are periodically revised. See e.g. HRI/GEN/2/Rev.4 (2007).

28 Boerefijn 2012 (b), pp. 492-494.

29 *Ibid.*, p. 497.

30 The Committee may also include guidelines on the subjects on which the next report ought to focus. Rule 53 Rules of Procedure.

31 Rule 54 Rules of Procedure.

32 Article 22 Optional Protocol.

33 Rule 51 Rules of Procedure in conjunction with Rule 45 Rules of Procedure; Boerefijn 2012 (b), pp. 505-507.

34 The consideration of the report formulated in the dialogue session has a non-contentious nature. Jacobs 1994, pp. 290-294; Boerefijn 2005, pp. 20-26; Boerefijn 2012 (b), pp. 497-505.

§ 11.3.2 *Communication procedure*

The second supervisory instrument is the communication procedure. Individuals are allowed to submit complaints to the Committee³⁵ pursuant to the Optional Protocol. The possibility to take effective action to prevent any kind of violation of the equal rights of women stipulated in the Women's Convention is instituted in this way. Reservations to this Protocol are not permissible.³⁶ The communication procedure gives any individual or groups of individuals the opportunity to submit complaints to the Committee against presumed violations of their rights under the Convention. Submissions³⁷ on behalf of individuals by third parties are also permissible, as long as they are presented with the consent of these individuals, unless the author can justify an action on behalf of the alleged victims without their consent. The communication is delivered to the Committee through the Secretary-General.³⁸

The Committee considers, pursuant to Article 3 Optional Protocol, a communication if it concerns a State that is party to the Protocol, only if it is written and not anonymous.³⁹ One major condition for the submission and consideration of a communication by the Committee is enshrined in Article 4 Optional Protocol, which prescribes that the Committee will consider a communication only when it is certain that all available domestic remedies have been exhausted, unless the applications are unreasonably prolonged or unlikely to bring effective relief for the victim(s). This is known as the '*ratione temporis*' principle.

Hence, the Committee has the authority to declare a communication inadmissible on five limited grounds.⁴⁰ For the consideration of the communication the Committee takes into account all the information which has been made available to it by or on behalf of the (group of) victims and by the State-party, after receiving written explanations or statements by the State-party clarifying the matter and the remedy that has been provided, within a time period of six months.⁴¹ During this process the State-party has an obligation, pursuant to Article 11 Optional Protocol and rule 91 Rules of Procedure, to ensure the well-being and safety of the individuals and to protect them from ill-treatment and intimidation as a result of the submission of a communication to the Committee. After its admission the communication is examined on its merits. If it is deemed necessary, and prior to evaluation of the merits, the Committee may request the State-party to introduce interim measures to avoid irreparable damage to the victim(s) of the alleged violation. This is an innovation which constitutes an exclusive power of the Committee.⁴²

35 This procedure is instituted in Arts. 1-7 Optional Protocol. See Connors 2012, pp. 607-659.

36 Article 17 Optional Protocol.

37 The submissions ought to be entered in accordance with the model form for the submission of communications to the Women's Convention, on: www.un.org/womenwatch/daw/cedaw/protocol/text.htm.

38 Articles 1, 2 and 3 Optional Protocol in conjunction with Rules 56-59 Rules of Procedure; see also Connors 2012, pp. 619-632.

39 Rule 56 para. 3 Rules of Procedure.

40 According to Art. 4 para. 2 Optional Protocol these reasons are: (a) the communication has already been examined by the Committee or it is under another international procedure, (b) it is incompatible with the Women's Convention, (c) it is ill-founded or insufficiently substantiated, (d) it entails an abuse of the right to submit a complaint, and (e) the facts occurred prior to the entry into force of the Optional Protocol for the concerned State-party. For further specifications on this aspect of the procedure, see Rules 64-72 Rules of Procedure; see also Connors 2012, pp. 632-647.

41 Articles 6 and 7 Optional Protocol.

42 Article 5 Optional Protocol; Connors 2012, pp. 647-649, 669-670.

In accordance with Article 7 paragraph 3 Optional Protocol the Committee, after the examination of the communication, transmits its findings to the parties involved. This provides grounds for follow-up procedures after the consideration of a communication. Furthermore, based on this it can present recommendations to the State-party. The latter then acquires an obligation to give its considerations on the views and recommendations of the Committee and it also has to provide a written response on the actions taken, within six months, in a so-called follow-up procedure. This procedure can be seen as a means of pressure on the State-party to amend its policies and (legal) measures, as a precaution to prevent future violations of the rights and freedoms guaranteed in the Convention. The written response of the State involved contains information on the actions taken in the light of views and recommendations formulated by the Committee. An invitation might also be extended to the State to provide this same information if deemed necessary, in the subsequent periodic report of the concerned State-party in accordance with Article 18 Women's Convention.⁴³

Although the views and recommendations of the Committee do not have any binding force, State-parties have a tendency to comply with these recommendations. The Committee publishes annually a summary of its activities stemming from the Optional Protocol to the General Assembly of the United Nations as prescribed in Article 21 Women's Convention.⁴⁴

§ 11.3.3 *Inquiry procedure*

The third supervisory instrument of the Committee to be found in Article 8 Optional Protocol, is the inquiry procedure. This provision creates the possibility for the Committee to initiate a confidential investigation on possible grave or systematic violations of women's rights committed by a State-party. It is somewhat remarkable that the Optional Protocol provides on the one hand an obligation for State-parties to cooperate with the introduction of the communication procedure after the ratification of the Protocol, while on the other hand it gives them the opportunity to ignore the authority of the Committee by refusing to conduct an inquiry, pursuant to Article 10 Optional Protocol. The investigation based on Article 8 paragraph 1 Optional Protocol has to be set in motion by information received which is considered by the Committee to be reliable.⁴⁵ The information on these violations is submitted to the Committee through the Secretary-General.⁴⁶

The State concerned in such cases is requested to cooperate in the examination of the information and (members of) the Committee may visit⁴⁷ the territory of the State-party, but

43 Article 7 paras. 4 and 5 Optional Protocol in conjunction with Rule 73 Rules of Procedure; see also Connors 2012, pp. 653-659.

44 This also includes its findings related to an inquiry procedure. This obligation is laid down in Art. 12 Optional Protocol.

45 As there has been only one inquiry, the Committee has not been able to formulate criteria for the determination of the reliability of the information nor on the threshold for the definition of the term 'grave or systematic violation'. In this sense Connors points out, following Tavares da Silva and Ferrer-Gomez, the two appointed Committee members who performed the inquiry, that 'the violations can be either grave or systematic, not necessarily both'. Connors 2012, pp. 665-666.

46 Article 8 para. 2 Optional Protocol; Rules 77-79 Rules of Procedure.

47 For the implementation of other human rights conventions and decisions of international organisations, surveys, i.e. investigations, may be conducted in the territories of State-members. One of the most recent investigations conducted in Curaçao relates to the implementation of children's rights, where a preliminary

only with its consent.⁴⁸ In accordance with rule 83 Rules of Procedure, governmental agencies, NGOs and even individuals can be approached for the submission of additional information on the supposed violations. The members of the Committee conduct, in accordance herewith, an in-depth inquiry. They report their findings afterwards to the Committee. After conclusion of the investigation, pursuant to Article 8 paragraphs 3 to 5 Optional Protocol,⁴⁹ the Committee is obliged to transmit its findings to the State-party concerned, through the Secretary-General, together with its comments and recommendations. The State receives the opportunity to submit its observations on the findings of the Committee, within a time period of six months. The confidentiality⁵⁰ of this procedure is guaranteed by the Committee. The Committee even has the authority to request further information on the measures taken after this period.⁵¹ Like the previous procedure, the inquiry procedure also provides for, in Article 9 paragraph 1 Optional Protocol in conjunction with rule 90 Rules of Procedure, the submission of an invitation to the State-party to include in its periodic report, in accordance with Article 18 Women's Convention, detailed information on the measures taken in response to the inquiry conducted. As of 2014, only one inquiry procedure has been conducted.⁵²

§ 11.4 Reporting obligations of Curaçao

The initial reports of the Kingdom⁵³ were submitted in 1993,⁵⁴ and the last (exceptional) report was in 2013.⁵⁵ The Kingdom, including Curaçao,⁵⁶ was due to submit its sixth periodic report in February 2014. Prior to 2010, information on the situation of women in Curaçao⁵⁷ was included in the reports submitted by the former Netherlands Antilles. The concluding observations of the Committee on these periodic reports are therefore important.

analysis was performed in November 2011 on the socio-economic situation of children and women. For the preliminary records see '*Observatorio Social del Ecuador, Análisis de la situación de la niñez y de las mujeres en Curazao, Informe Inicial, SITAN Curazao/ UNICEF-TACRO-OSE*', Enero 2012. The final report was presented in 2013. See 'The situation of children and adolescents in Curaçao', United Nations Children's Funds (UNICEF) 2013.

48 Article 8 para. 2 Optional Protocol in conjunction with Rules 84-87 Rules of Procedure.

49 This is also prescribed in Rules 80 and 89 Rules of Procedure.

50 The confidentiality of the communication procedure is guaranteed in Rule 74 Rules of Procedure.

51 Article 9 para. 2 Optional Protocol.

52 CEDAW/C/2005/OP.8/MEXICO (*The Ciudad Juarez*). For details on the merits of this case see § 11.12 below.

53 For the sake of completeness I apply 'the Kingdom' in this study. The reports are actually submitted by the European part of the Kingdom (the Netherlands) and the reports of the Caribbean countries (Aruba and the former Netherlands Antilles) are presented and incorporated as an addendum to this report. Considering the main focus of this research, only the reports submitted by the former Netherlands Antilles are analysed. Only when and if necessary will the periodic reports of other countries within the Kingdom be taken into consideration.

54 CEDAW/C/NET/1, 1993; CEDAW/C/NET/1/Add.1, 1993; CEDAW/C/NET/1/Add.2, 1993.

55 CEDAW/C/NLD/CO/5/Add.2, 2013.

56 This is the first time for Curaçao. A meeting was held between the Directorate of Foreign Relations of Curaçao and NGOs in preparation for this report on 15 April 2013. As of April 2014 the report of the Kingdom, including that of Curaçao, has not been submitted. It is in the translation phase. See '*Nieuwsbrief Netwerk VN-Vrouwenverdrag*', February 2014, p. 1, available on: www.vrouwenverdrag.nl. This information was confirmed by a collaborator (Mrs M Racamy) of the Directorate of Foreign Relations (DBB), on 11 April 2014.

57 The reports of the former Netherlands Antilles more often than not dealt with the situation of women in the island territory Curaçao as the largest part of the population lived on this island and the departments of the federal Executive were established there.

Generally speaking the former Netherlands Antilles, unlike many other Caribbean islands, have been able to comply with their periodic reporting obligations on time.⁵⁸ Several of these small States have only submitted some periodic reports, while others were not even capable of doing that. After the enactment of the possibility of submitting combined reports in 1997 and by extending this with the possibility of submitting all overdue reports in one document in 2000, several Caribbean islands complied with their reporting obligations. Barbados was one of the few Caribbean small States that had already ratified the convention in 1980, yet it only presented its initial report in 1990.⁵⁹ It has submitted three subsequent periodic reports since then.⁶⁰ Trinidad and Tobago in their turn only submitted their combined report, containing their initial, second and third reports, in 2002.⁶¹ All the overdue reports of Bahamas⁶² and Grenada⁶³ were considered by the Committee in 2012.⁶⁴ Dominica is one of the exceptional cases where the Committee was obliged to consider the implementation of the Convention without any report.⁶⁵

Considering the social, cultural and historical similarities between these Caribbean islands and the Caribbean countries within the Kingdom, the relevant aspects of the concluding observations of the Committee on the reports of these States are taken into account later in this chapter during the examination of the concluding comments of the Committee on the report of the former Netherlands Antilles, when and if this is required.

§ 11.4.1 Proceedings followed by the Antillean, i.e. Curaçaoan, Government

Prior to a contemplation of the instructions provided by the Committee to the Kingdom for its Caribbean countries, I have to make some remarks on the proceedings followed by the former Netherlands Antilles for the compilation of its reports. I assume that this procedure is followed by Curaçao as one of its successors.⁶⁶ Effectively, the first complete report of Curaçao has to comply with the Guidelines of 2009.⁶⁷ A major challenge is the length⁶⁸ of the report of the Kingdom, which has to consist of information from four countries.

The Directorate of Foreign Relations (DBB) of the former Netherlands Antilles⁶⁹ was the agency effectively in charge of the coordination of the compilation of the periodic reports.

58 Consider e.g. list of status of submission of State-reports as of 2009 (CEDAW/C/2009/I/2).

59 UN Doc A/47/38 (SUPP), 1992, paras. 27-64.

60 The concluding comments on the reports of Barbados: UN Doc. A/47/38 (SUPP), 1992, paras. 27-64; UN Doc. A/49/38, 1994, paras. 413-449; UN Doc. A/57/38, 2002, paras. 209-255; visit www.ohchr.org.

61 Trinidad and Tobago became party to the Women's Convention in 1985. For the list of ratifications, accession and succession to the Women's Convention see www.ohchr.org.

62 Bahamas submitted its combined initial to fourth report in 2009 (CEDAW/C/BHS/4) and its fifth periodic report in 2011 (CEDAW/C/BHS/5).

63 Grenada submitted its combined initial to fifth report in 2011 (CEDAW/C/GRD 1-5).

64 CEDAW/C/BHS/CO/1-5, 2012; CEDAW/C/GRD/CO/1-5, 2012; Also, Saint Lucia submitted a combined report (CEDAW/C/LCA/1-6), which was considered by the Committee in 2006. CEDAW/C/LCA/CO/6, 2006.

65 CEDAW/C/DMA/CO/AR, 2009.

66 For the actionplan on the compilation of the local report see Annex 6.

67 HRI/GEN/2/Rev.6.

68 According to HRI/GEN/2/Rev.6, para. 19 and J.1 the report should not exceed a length of 120 pages (60-80 pages for the common core report and 40 pages for the periodic report).

69 Since 10 October 2010 Curaçao has had its own Directorate of Foreign Relations (Directie Buitenlandse Betrekkingen (DBB)). This department comes under the authority of the Prime Minister. Article 4 National Ordinance 'Ambtelijk Bestuurlijke Organisatie'; Businessplan Ministerie van Algemene Zaken, 'Land in zicht!', 10 April 2010; For a short contribution on the background of this department see Prens 2005, pp. 279-284.

The Minister of General Affairs and External Relations (Prime Minister),⁷⁰ under which this Directorate lay, was ultimately responsible for the execution of this task. Information for the periodic reports was gathered based on the guidelines, general recommendations and the concluding comments on the State-reports of the Kingdom as formulated by the Committee. Information for the reports came from the governmental and semi-governmental agencies and NGOs involved. The main governmental department responsible for the compilation of the information was the Directorate of Social Development.⁷¹

The Directorate of Foreign Relations (DBB) did not develop any other national guidelines for the way in which these organisations should provide the information required for the reports.⁷² It simply followed the guidelines provided by the Committee and the Office of the High Commissioner of Human Rights. After the final compilation of the report, based on a selection of the information provided by governmental agencies and NGOs concerned, made by the Directorate of Foreign Relations (DBB), the report was sent to the Executive for its approval. Afterwards it was submitted to the Committee through the Minister of Foreign Relations of the Kingdom.⁷³

The former Netherlands Antilles did not have a statutory obligation⁷⁴ to examine the national report by the Parliament prior to its submission to the Committee, as an additional monitoring instrument. Subsequently, the Parliament of Curaçao is currently also not involved in the reporting process. It remains to be seen whether the Executive will inform the Committee, pursuant to the Guidelines of 2009, of this serious omission. Moreover, the Directorate of Foreign Relations of Curaçao (DBB) follows the position and policy on international human rights law delineated by the Dutch (i.e. Kingdom's) Ministry Foreign Relations, where effectively the input and participation of the Caribbean countries is nil.⁷⁵

§ 11.5 The initial report and the Committee's concluding comments

In accordance with the consolidated guidelines of 1991,⁷⁶ the initial report of the former Netherlands Antilles⁷⁷ of 1993 included general information on the social, economic, political and legal structures. Many of the (legal) measures and policies introduced during the late 1970s and 1980s, as described in Chapter 4 above, were explained. The information on the implementation of the provisions of the Women's Convention was general, vague and meagre. It did not give much insight into the real effectuation of the measures, through

70 Article 3 National Ordinance '*Organisatie Landsoverheid*'.

71 Article 6 para. f National Ordinance '*Organisatie Landsoverheid*'.

72 The information supplied to the Human Rights Council in 2008 that the former Netherlands Antilles had adopted a policy on human rights to improve its reporting to the treaty-based bodies prove to be incorrect. See A/HRC/8/31, para. 38; in my search for local policies on implementation of human rights and the compliance with reporting obligations I did not retrieve such policy. This country did not have any official domestic guidelines. This information was obtained from and confirmed by a collaborator of the Directorate of Foreign Relations (DBB), Mrs D van der Veen, on 10 August 2012.

73 The procedure described in regard to the compilation of information is uniform for the compilation of all the periodic reports for the respective treaty bodies. *Ibid*.

74 Article 3 Act Approval of the Women's Convention.

75 See '*Respect and Justice for all*', Ministry of Foreign Affairs, The Hague, August 2013; this was also the case for the former Netherlands Antilles. See Prens 2005, p. 282.

76 UN Doc. HRI/1991/1* as annex to HRI/CORE/1.

77 CEDAW/C/NET/1/Add.1, 1993.

concrete statistical and financial information on the national policies and projects introduced and implemented.

It is worth noting that the authority and role of the then federal Bureau for Women's Affairs on the implementation of the State-obligations as part of the national machinery was extensively explained, including its role in the awareness-raising process of women on their equal rights under Article 5 Women's Convention.

Although the concluding comments of the Committee of 1994 did not give much insight into the issues that were addressed about this country, it was in general satisfied with the implementation of the Convention in the former Netherlands Antilles (and Aruba), considering the economic difficulties which the territory was confronting at the time. Only two comments specifically concerned the situation in the former Netherlands Antilles (and Aruba).

The Committee had some major concerns though on factors and difficulties which might have had effect on the adequate implementation of the Convention in the Kingdom. It finally suggested that the second report of the State-party should provide more information on the national machinery of the former Netherlands Antilles and Aruba.⁷⁸

A small comparison shows that, unlike those on the former Netherlands Antilles, the concluding comments of the Committee on the initial report of Barbados⁷⁹ were extensive. The realisation of each obligation stated in the provisions of the Convention, including Articles 5 and 16 Women's Convention, was commented on by the Committee. Under the scope of Article 5 Women's Convention lay, for instance, the request for additional information on the legal framework and statistics on the issue of domestic violence and the programmes supporting women who were victims of this kind of violence in Barbados. Further information on, inter alia, the results of programmes introduced with the objective of modifying social and cultural patterns of conduct, and on the reasons for the preponderance of women in certain professions, was requested as well.⁸⁰ The Committee commented finally on the activities of NGOs for the advancement of women. It expressed its satisfaction with the attention which the State was paying to the issue of the imbalance between female voters and their low participation in political life, the steps taken by the Bureau of Women's Affairs and the assistance which the State intended to give to female-headed households. It also expressed its hopes that the Bureau of Women's Affairs would receive assistance from international organisations in its efforts to support women during the economic crisis and that the country would get assistance in its research on the effects on women of SAPs.⁸¹

§ 11.6 The second and third reports and the Committee's concluding comments

Starting off from the fact that the second⁸² and the third⁸³ periodic reports of the Kingdom were considered simultaneously by the Committee in 2001, I briefly address these two documents and the concluding comments of the Committee simultaneously. I have to note

78 UN Doc. A/49/38, 1994, paras. 306-317.

79 UN Doc. A/47/38(SUPP), 1992, paras. 27-64.

80 *Ibid.*, para. 34.

81 *Ibid.*, 1992, para. 64.

82 CEDAW/C/NET/2, 1999; CEDAW/C/NET/2/Add.1, 1999; CEDAW/C/NET/2/Add.2, 1999.

83 CEDAW/C/NET/3, 2000; CEDAW/C/NET/3/Add.1, 2000; CEDAW/C/NET/3/Add.2, 2000 (Spanish version).

though that, in the case of the Netherlands, the Dutch Executive, in preparation for its second report, set up the Groenman commission which investigated the implementation of the Women's Convention in the Netherlands after considering the comments of the Committee on the first report of the Kingdom. The Groenman commission's report of 1997⁸⁴ contained several recommendations for the Dutch Executive on improvements of national measures for the better effectiveness of the Convention. The commission concluded, inter alia, that the domestic legislation was not properly implemented in accordance with the Convention. Additionally, policies directed at the improvement of the position of women were often incorporated in general policies, while not enough attention was paid to gender-specific matters. The second periodic report of the Netherlands of 1998 incorporated the recommendations of the Groenman commission.⁸⁵ In the case of the Caribbean countries I did not encounter any indication that such an evaluation has taken place.

The report of the former Netherlands Antilles for the period of 1993 to 1997 upheld numerous priorities, plans and projects that had to be effectuated for the accomplishment of equality of women with men. The federal Executive noted, though, that the backlog of legislation formed the main obstacle to the proper implementation of the Women's Convention and the realisation of many of these plans.⁸⁶ Figures to substantiate the progress and the introduction of future plans and projects for the accomplishment of the strengthening of the position of women were not given. The report contained again many of the programmes and projects described in Chapter 4 above which had been introduced in the early 1990s. They were often not substantiated with sex-disaggregated statistical and financial information. Topics like trafficking in women, (youth) prostitution, the participation of women in public life, the access of women to school and the labour market were addressed with general statistics. No in-depth information was included on concrete policies, regulations and projects on gender and women's rights. And, as in the subsequent reports, no information on projects directed towards the elimination of gender-stereotypes, as mandated in Article 5 Women's Convention, was provided.⁸⁷ The report did not start out from the recommendations formulated in the first report either. This is, however, not surprising as not much information nor many guidelines were given to this territory by the Committee in the concluding comments on the initial report.

The third periodic report covered the period of 1997 to 1999. The federal Executive pointed out that several (legal) measures⁸⁸ had been introduced. The obstacles which impeded the proper implementation of the Women's Convention, such as the backlog of legislation, the compilation of information and statistics in the island territories and the financial and economic difficulties confronted, were also mentioned in this report.⁸⁹ Statistical information on the progress of women in many fields, in relation to the last report,

84 *'Het Vrouwenverdrag in Nederland anno 1997: Verslag van de Commissie voor de eerste nationale rapportage over de implementatie in Nederland van het Internationaal verdrag tegen discriminatie van vrouwen'*, Commissie Groenman e.a., February 1997, available on www.vrouwenverdrag.nl.

85 De Boer 2003, p. 19; CEDAW/C/7/Rev. 3 (1996), chap. B; *'Het VN-Vrouwenverdrag'*, in: Arachne, Vrouwenadviesbureau 1997, vol. 5, no. 2, available on: <http://home.wxs.nl/~evenwild/wsts210/ivdv/arachne/fcoverivdv.htm>, downloaded on 15 May 2014.

86 CEDAW/C/NET/2/Add.2, 1999, pp. 4-12.

87 See e.g. CEDAW/C/NET/2/Add.2, 1999, pp. 14-15; CEDAW/C/NLD/4/Add.2, 2009, pp. 13-15; this provision was not even commented on in the fifth report.

88 For a short overview of the measures, see Chapter 4 above.

89 CEDAW/C/NET/3/Add.2, 2000, pp. 3-4.

was not given however. No comparison was performed between the statistics in the second and the third report in regard to the participation of women in the labour market during 1993 and 1999.⁹⁰

In sum, the main subjects concerning the improvement of the position of women in the former Antillean society were addressed in the report. The involvement of national or official institutions, such as the legislature(s), governmental departments and the local Bureau for Women's Affairs, which exercised responsibility towards the implementation of the Convention with effective policies and measures, were not always incorporated in the report. No information was presented on developments on, for instance, female-headed households, single motherhood, women on welfare and the lower earnings of women in general. As in the second report, Article 16 Women's Convention included brief information on the then upcoming enactment of the reformed family law;⁹¹ the Executive expected that with its enactment all the disadvantages experienced by women would be eliminated.

These periodic reports of the State-party were commented on by the Committee at one and the same time. Considering the preliminary remarks, questions and concerns⁹² of the pre-session working group during the dialogue session, the concluding observations of the Committee on the report of the former Netherlands Antilles (and also Aruba) came as no surprise.

The Committee voiced first of all its regret that no representatives of these territories had been present at the dialogue. Accordingly, it was difficult for the Committee to evaluate the reports submitted. It urged the Netherlands to ensure that the Caribbean countries would get sufficient support so that they could form part of the delegation of the Kingdom at the presentation of the next reports.⁹³ Such a request is not unusual. In the extreme case of Dominica, the Committee even suggested the 'seeking of technical cooperation and assistance from UN Agencies.'⁹⁴

Most importantly, the Committee expressed its concerns on the status of women in the former Netherlands Antilles (and Aruba) as, in its judgment, gender equality was far from being reached and gender-based stereotypes persisted.⁹⁵ It made almost the same comment for Trinidad and Tobago in 2002 as, according to the Committee, these attitudes and the persistence of gender-based violence form an obstacle to the realisation of the Convention. Gender-stereotypes have been influencing the position of women in every area of the society of Trinidad and Tobago as well.⁹⁶

The Committee was also concerned about the negative effects of the SAPs on the position of women in the former Netherlands Antilles, as in other Caribbean countries. It urged the Netherlands to strengthen its economic support to the Netherlands Antilles (and Aruba) for programmes on capacity building to improve the achievement of gender equality, including support for the implementation of the obligation under the Women's

90 Ibid., p. 20-22.

91 CEDAW/C/NET/2/Add.2, 1999, pp. 50-51; CEDAW/C/NET/3/Add.2, 2000, p. 29. For more information on these amendments see Chapter 10 above.

92 CEDAW/C/SR.512, 2001, paras. 10-13, 32, 34; CEDAW/C/SR.513, 2001, paras. 4, 5-7, 12, 18, 22, 33.

93 UN Doc. A/56/38, 2001, paras. 225-226.

94 CEDAW/C/DMA/CO/AR, 2009, para. 6.

95 UN Doc. A/56/38, 2001, para. 227.

96 UN Doc. A/57/38 (part 1), 2002, paras. 138, 145, 147-149, 151.

Convention.⁹⁷ The same statement was made for Trinidad and Tobago, especially in the case of female-headed households.⁹⁸

Unlike the situation in the former Netherlands Antilles and in Trinidad and Tobago the Committee was, in the case of Barbados, satisfied with the fact that its State-Government was able to continue with its plan on the empowerment of women in spite of the economic challenges related to SAPs.⁹⁹ In fact, in comparison with the former Netherlands Antilles, many positive features, such as the emphasis which the Barbadian Executive put on education as the key factor in the advancement of women and the dissemination of information directed towards the improvement of the status of women, were enumerated and acknowledged. The Committee requested more information on several topics in the field of education, equality legislation and the participation of women in the labour market in the next report from Barbados.

Finally, in the case of the Kingdom, it was requested that its concluding comments were widely disseminated in order to make the people, particularly governmental administrators and politicians, in the countries aware of the further steps that had to be taken to achieve real equality for women in the entire realm.¹⁰⁰ The same request was made to other (small) States, such as Dominica.¹⁰¹

§ 11.7 The fourth report and the Committee's concluding comments

The fourth report of the Kingdom dated from 2005.¹⁰² The former Netherlands Antilles did not comply with this obligation in time.¹⁰³ The State-party did not provide any information on the non-compliance by the former Netherlands Antilles either.¹⁰⁴

It did not submit its fourth periodic report until 2009,¹⁰⁵ although the report should have been presented in January 2008, as stipulated by the Committee in 2007.¹⁰⁶ This report addressed the developments in the period between 2000 and 2004. NGOs were presumably consulted for the compilation of this report. The involvement of the NGOs and their contributions were, however, not specified. Remarks were again made on the financial constraints which the country was confronting at that time, resulting in forced cuts in the spending on social services and overall subsidies, while a lack of manpower was registered.¹⁰⁷ Issues such as a policy on the promotion of equality among men and women, gender mainstreaming, policies and measures on several specific areas,¹⁰⁸ trafficking in

97 UN Doc. A/56/38 (2001), para. 228.

98 UN Doc. A/57/38 (part 1), 2002, paras. 155-156.

99 UN Doc. A/49/38, 1994, para. 445.

100 UN Doc. A/56/38, 2001, para. 231.

101 CEDAW/C/DMA/CO/AR, 2009, para. 10.

102 The Netherlands and Aruba submitted their fourth report as scheduled in 2005, unlike the former Netherlands Antilles which did not comply with its reporting obligation in time. CEDAW/C/NLD/4, 2005; CEDAW/C/NLD/4/Add.1, 2005. For more information on the fourth report of the Netherlands, visit www.vrouwenverdrag.nl/vv/nederland/rapportages_aan_cedaw/Vierde_rapportage_-_2005/.

103 CEDAW/C/NLD/Q/4, 2006, para. 28.

104 CEDAW/C/NLD/Q/4/Add.1, 2006.

105 CEDAW/C/NLD/4/Add.2, 2009.

106 CEDAW/C/NLD/CO/4, 2007, para. 45.

107 CEDAW/C/NLD/4/Add.2, 2009, pp. 3-4.

108 Some of the areas were, inter alia, (1) the registration of undocumented migrants during the so-called grace period; (2) the establishment of '*Fundashon Maishi Chiki*' which supports small businesses.

women, reforms in labour legislation and family law, HIV/AIDS and teenage pregnancy, were addressed. One aspect worthy of note was the rather extensive elaboration¹⁰⁹ on the improvements introduced in the educational system in general. However, not much information on the direct significance of these reforms for the development and education of girls and young women, substantiated through figures, was provided. In my opinion this information was better suited for the periodic report on the implementation of the International Convention on the Rights of the Child.

Overall, the provided information did not correlate with the obligations as set out in the guidelines, as it did not give much insight into the real application of the measures based on the recommendations laid down in the concluding comments of the Committee on the second and third periodic reports. Concrete statistical and financial information on the national policies and projects introduced and implemented, especially after the implemented SAPs, were not sufficiently incorporated.

The concluding comments of the Committee on the fourth periodic report of the State-party did not include observations on the situation of the former Netherlands Antilles. These were included in its fifth periodic report.¹¹⁰ However, the concluding comments of the Committee on the fourth reports of the other two countries within the Kingdom were studied for general guidelines which the Committee provided on the approach of the State-party.¹¹¹

Overall, the Committee formulated in quite trenchant language its concluding observations for the Netherlands and Aruba.¹¹² It expressed its regrets about and dissatisfaction with the absence of information on the Netherlands Antilles and the lack of a representative of this country in the delegation.¹¹³ It called upon the State-party to ensure that information on the implementation of the Women's Convention in the former Netherlands Antilles and the realisation of the principle of equality between men and women were included in its next periodic report. It demanded the presence of representatives of this country at the dialogue with the Committee.¹¹⁴ The submission of the fourth periodic report of this country was requested for January 2008.¹¹⁵

One interesting recommendation was stipulated in paragraph 12, which concerned the request of the Committee to the State-party to reconsider its position on the direct applicability of the substantive provisions of the Convention within its domestic legal order and to ensure this. The Committee emphasised that, with the ratification of the Optional Protocol by the Kingdom, it obtained an obligation to provide for domestic remedies for alleged violation of the rights guaranteed to individuals by the Convention. Furthermore, it recommended the State to take measures to increase awareness about the Women's Convention and its Optional Protocol and its General Recommendations among law

109 Compare the elaboration given under Art. 10 Women's Convention (in total 27 pages) with the elaboration on the other provisions of the Women's Convention.

110 CEDAW/C/NLD/5, 2008; CEDAW/C/NLD/5/Add.2, 2009.

111 CEDAW/C/NLD/CO/4, 2007.

112 The Dutch NGOs were satisfied with these comments, as their criticisms on the policy of the Executive of the Netherlands on the status and position of women were heard and incorporated in these comments. See press release of the *'Humanistische Overleg Mensenrechten'*, 26 January 2007.

113 CEDAW/C/NLD/CO/4, 2007, paras. 3, 45.

114 *Ibid.*, paras. 8, 10.

115 *Ibid.*, para. 45.

practitioners to ensure that objectives formulated in the Convention were accomplished and used in judicial processes. The observation of the Committee that State-parties have an obligation to integrate the Convention in their domestic legal order is not new, as it was also made to other Caribbean small State-parties, such as Dominica and Trinidad and Tobago.¹¹⁶

The Committee was, as in the case of the Netherlands,¹¹⁷ also in the case of Barbados preoccupied with 'entrenched stereotypical attitudes and behaviors which tend to reinforce women's inferior status in all sphere of life, and regrets that the State-party has not undertaken sustained programs to change these social and cultural attitudes and patterns of behavior that lead to stereotyping'. Consequently, the strengthening of measures directed at the alteration of gender-stereotypes on the role and responsibility of men and women was suggested by the Committee in its concluding comments on the fourth report of Barbados as well. This could be accomplished through awareness-raising programmes in collaboration with the media and NGOs and educational programmes. In this sense, the introduction and effectuation of a national gender policy in accordance with the Convention was imperative.¹¹⁸

In its last recommendations for the Kingdom it urged this State-party to use fully internationally developed instruments¹¹⁹ for the effective implementation and dissemination of the obligations laid down in the Women's Convention.¹²⁰ An identical request was made to Caribbean countries like Trinidad and Tobago and Barbados in 2002.¹²¹

§ 11.8 The fifth report and the Committee's concluding comments

The fifth periodic report of the former Netherlands Antilles, as part of the Kingdom's report was presented in 2009.¹²² It contained information on an unclear national policy and (legal) measures during the period between 2005 and 2008. It was compiled in collaboration with several NGOs.¹²³ The State-Government reported the then upcoming constitutional changes which would lead to the dissolution of the Netherlands Antilles, and stated that the island territories of Curaçao and Sint Maarten, as autonomous countries,¹²⁴ would be responsible for the future reports on the implementation of the Convention at local level to the Committee.

Not much concrete and financial information was provided on the emancipation and gender-based policy and (legal) measures addressing the selected subjects and the disadvantages experienced by women and girls. Subjects like the project aimed at the preparation of young (teenage) mothers for the labour market and independent living, poverty, domestic violence and the training for effective intervention for law enforcement

116 CEDAW/C/DMA/CO/AR, 2009, para. 7; UN Doc. A/57/38 (part 1), 2002, para. 139.

117 CEDAW/C/NLD/CO/4, 2007, para. 16.

118 UN Doc. A/57/38 (part III), 2002, paras. 233-234.

119 These instruments are e.g. the Beijing Declaration and Platform for Action and the Millennium Development Goals.

120 CEDAW/C/NLD/CO/4, 2007, paras. 41-44.

121 UN Doc. A/57/38 (part 1), 2002, para. 166; UN Doc. A/57/38 (part III), 2002, para. 255.

122 CEDAW/C/NLD/5/Add.2.

123 This means that the report not only includes information on the governmental sector, but also on the contribution of all types of NGOs. Consequently, it provides an unclear view on the gender policy that should be developed and implemented by the Executive.

124 CEDAW/C/NLD/5/Add.2, pp. 3-5.

officers in 2005,¹²⁵ the establishing of an inter-ministerial working group, the participation of women in the public sphere, and the process for the introduction of a new labour market policy were enumerated. Again an extensive elaboration on the participation of youngsters in the entire¹²⁶ educational system, educational reforms and the UNESCO research concerning boys' problems of 2006¹²⁷ were included. The same statistical data as in the fourth periodic report on the participation of women in the labour sector was presented. Information on compliance with the obligations under Articles 5 and 16 Women's Convention was completely excluded.

The concluding comments on the fifth report of the State-party were published in 2010.¹²⁸ As a matter of fact, the Committee formulated its final observations following the points of concern voiced by the pre-session working group¹²⁹ during the constructive dialogue. It was obviously pleased with the submission of the fourth periodic report by the former Netherlands Antilles, together with the fifth report of the State. But at the same time it regretted that not always adequate answers were given on some questions. A brief comparison between the concluding comments on the periodic report of Barbados and that of the former Netherlands Antilles shows that many areas of concern that were explicitly addressed in the fourth report of Barbados of 2002 were not mentioned in a concluding observation on the fourth report of the former Netherlands Antilles.¹³⁰ Some issues were addressed and accommodated in the concluding comments on the fifth report of the Kingdom.

The Committee urged the State-party to be aware of the binding force of the Women's Convention for all branches of Government. It emphasised that the Parliament should also assume a role in the implementation of the recommendations of the Committee and in the next reporting process. These same recommendations were made for countries like the Bahamas and Grenada in 2012.¹³¹

In relation to the previous concluding observations, the Committee urged the Netherlands to address their full implementation and also the formulated concerns of the Committee. It reiterated its call on the reconsideration of the position of the State-party on the full applicability of the provisions of the Women's Convention in the domestic legal order.¹³²

In my opinion, unlike those in the previous reports, most of the concluding observations and comments in the fifth reports are valid for the entire Kingdom. The fact remains though

125 This training was given in 2005 by, inter alia, CAFRA, the Public Prosecutor and other governmental and NGOs. See Reader '*Geweld in de relationele sfeer*'. Opsporing, vervolging en hulpverlening, Willemstad, Curaçao, 13 juni 2005.

126 In this regard I am referring to all the levels within the system, namely primary education, special education, secondary education, (pre-)vocational education and higher education.

127 This research concluded in 2009. See Narain 2010.

128 CEDAW/C/NLD/CO/5, 2010.

129 See e.g. CEDAW/C/SR.916, 2010; CEDAW/C/SR.917, 2010; CEDAW/C/NLD/Q/5, 2009; CEDAW/C/NLD/Q/5/Add.1, 2009. For the reaction of the (Kingdom) Netherlands, see CEDAW/C/NLD/Q/5/Add.1, 2009, para. 4; Letter of Dutch Minister of Education, Culture and Science to the Dutch CEDAW Network, 10 December 2008.

130 UN Doc A/57/38 (part III), 2002, paras. 235-250.

131 CEDAW/C/GRD/CO/1-5, 2012, paras. 7-8; CEDAW/C/BHS/CO/1-5, 2012, paras. 9-10.

132 CEDAW/C/NLD/CO/5, 2010, paras. 8, 9, 11 and 13.

that a significant part of the comments regarded the position of women in the Netherlands.¹³³ For the Caribbean countries, an important recommendation was presented in paragraph 15. The Committee stated clearly therein that the principal responsibility for the realisation of the Women's Convention lay with the Kingdom, as stipulated in the Charter. The Committee recommended the State-party to ensure the coherent and consistent application of the Convention at all levels and in all areas covered by the Convention. It requested the State-party again to disseminate information on and raise awareness about the Convention, its Optional Protocol and General Recommendations among all stakeholders.

In its call for the development and enactment of a unified and comprehensive national strategy and policy on the implementation of the Convention in the State-party, the Committee urged the former Netherlands Antilles on the occasion of the constitutional reforms to upgrade its national machinery for the advancement of women and to develop its own comprehensive gender-mainstreaming policy.¹³⁴ In addition, in its request on the creation of a constructive dialogue with civil society for the safeguarding of women's rights, the Committee expressed in paragraph 21 its support for the intention of the federal Executive to fund the compilation of shadow reports by NGOs. It also urged the conceptualisation and use of temporary special measures by the public and private sectors in fields where women were at a disadvantage.¹³⁵

Related to the obligation to eliminate gender stereotypes, the Committee called upon the State-party to strengthen its efforts to eradicate gender-stereotypes and fixed parental roles within the family and society. The development of programmes addressing damaging gender stereotypes and all types of discrimination related to them, the scrutiny of governmental policy and educational programmes and the training of teachers on gender equality should come within the scope of these efforts. Subsequently, the State-party should assess the impact and effectiveness of these measures and follow-up actions should be taken.¹³⁶

In the case of Barbados, the Committee expressed its admiration for the introduction of, inter alia, a National Parental Programme, which challenged the perceptions of parents on traditional roles of men and women. Yet, it remained concerned about practices and traditions, as well as patriarchal attitudes which affect the position of women in private and public life adversely, just as it did for the Kingdom and Grenada.¹³⁷ So, the same recommendations on the eradication of gender stereotypes were made for all these States.

133 In response the Dutch Network 'VN-vrouwenverdrag' compiled a brochure on the comments on this periodic report formulated by the Committee. In this brochure it briefly expresses its view on the shortcomings of the (legal) measures taken by the Government of the Netherlands thus far. According to the Dutch Network 'VN-vrouwenverdrag' the Committee has expressed its critical view on the gender-based Dutch law and policy in relation to the Women's Convention. Furthermore, it pointed out that for proper execution of these recommendations an active and supervisory role of Dutch NGOs is imperative. 'Vrouwenrechten in Nederlands anno 2010; enige vooruitgang, nog veel te doen. De conclusies van het VN-Comite', Equality/Netwerk VN-vrouwenverdrag: Den Haag, April 2010; see Letter from the Netwerk VN-vrouwenverdrag' to the permanent Committee of Education, Culture and Science House of Representatives, no ref., topic: Hoofdlijnen emancipatie (Kamerstukken II 2010/2011 27017 nr. 74) en Kabinetsreactie Concluding Observations CEDAW (Kamerstukken II 2009/2010 30420 nr. 154), 31 May 2011.

134 CEDAW/C/NLD/CO/5, 2010, paras. 17, 19.

135 Ibid., para. 23.

136 Ibid., para. 25.

137 CEDAW/C/GRD/CO/1-5, 2012, paras. 19-20; CEDAW/C/BHS/CO/1-5, 2012, paras. 21-22.

On the topics of domestic violence and human trafficking, the Committee urged the former Netherlands Antilles (and Aruba) to adopt and enforce legislation regarding temporary restraining orders for perpetrators of domestic violence and on the criminalisation of all forms of human trafficking.¹³⁸ Even in countries like Grenada and Bahamas where legislation to combat gender-violence was enforced, extensive requests were made by the Committee to further strengthen the protection mechanisms for women in these areas.¹³⁹

In addition, the introduction of measures by all State-agencies in the countries within the Kingdom with the objective of enhancing equal representation in elected bodies and in all political and public sectors through, for instance, the use of temporary special measures, was recommended.¹⁴⁰ As with the concluding comments on the fourth periodic report, the Committee formulated its requests on the utilisation of developed international instruments such as the Beijing Platform for Action for the effective implementation and dissemination, throughout the State-Party's territories, of the Convention, its Optional Protocol and the concluding comments.¹⁴¹ The same request was made to many other Caribbean countries. Strangely enough, the Optional Protocol has not been ratified by many of them.¹⁴²

Finally, the Committee used its authority under Article 18 paragraph 1 (b) Women's Convention, and requested the Kingdom to submit written information on the measures undertaken to comply with the recommendations in paragraphs 27 and 29.¹⁴³ Compliance with this request resulted in the compilation of a report in which follow-up information was provided by the State-party on the implementation of these recommendations.¹⁴⁴

§ 11.9 The follow-up procedure of the Kingdom

The Kingdom presented the report containing a response on the respective concluding observations in 2012. For the former Netherlands Antilles (and also Aruba) in particular, the Committee urged the State-Government to enact legislation on temporary restraining orders which could be imposed on perpetrators of domestic violence. Regarding human trafficking, the adoption of legislation criminalising all forms of human trafficking without any delay was requested. Curaçao, as a successor of the Netherlands Antilles, pointed out that with the enactment of its new Criminal Code in 2011¹⁴⁵ general provisions¹⁴⁶ were introduced on the punishment of perpetrators of violence on an underage family member.¹⁴⁷ Next, the issue of human trafficking was handled by the enforcement of a much broader provision¹⁴⁸ on human trafficking than the old provision laid down in the (old) Criminal Code of the former Netherlands Antilles. The provision does not only address the issue of sexual exploitation but

138 CEDAW/C/NLD/CO/5, 2010, paras. 27, 29.

139 CEDAW/C/GRD/CO/1-5, 2012, paras. 23-26; CEDAW/C/BHS/CO/1-5, 2012, paras. 23-37.

140 CEDAW/C/NLD/CO/5, 2010, para. 33.

141 *Ibid.*, paras. 17, 48, 49, 51.

142 CEDAW/C/GRD/CO/1-5, 2012, para. 41; CEDAW/C/BHS/CO/1-5, 2012, para. 41; UN Doc A/57/38 (part III), 2002, para. 253; CEDAW/C/LCA/CO/6, 2006, para. 37.

143 CEDAW/C/NLD/CO/5, 2010, para. 52; the same request was made to Grenada and the Bahamas. See CEDAW/C/GRD/CO/1-5, 2012, para. 45; CEDAW/C/BHS/CO/1-5, 2012, para. 46.

144 CEDAW/C/NLD/CO/5/Add.1, 2012.

145 P.B. 2011, no. 48.

146 Articles 2:208-2:210 Criminal Code of Curaçao.

147 CEDAW/C/NLD/CO/5/Add.1, 2012, para. 4.

148 Articles 2:239-2:240 Criminal Code of Curaçao.

also aspects of human trafficking, such as forced labour or services, slavery and slavery-like practices and the removal of organs.¹⁴⁹ The report otherwise contained mainly information on the (legal) measures introduced in the Dutch legal system on these issues, which were appointed by the Committee. This report was discussed by the Committee in 2012. It concluded on the recommendations formulated in both paragraphs 27 and 29 that, in the case of Curaçao, the provisions incorporated in the revised Criminal Code did comply with the recommendation.¹⁵⁰ It subsequently requested additional information from the other countries, particularly the Netherlands, on the actions taken on aspects of implementation of the recommendations that were not met.¹⁵¹ The State-party complied herewith in 2013.¹⁵²

§ 11.10 Shadow report(s) submitted by NGOs

NGOs established and operating in the Kingdom are allowed to submit shadow reports to the respective supervising committees.¹⁵³ In the case of the former Netherlands Antilles only a few NGOs have been able and capable to provide the treaty-based bodies with additional information on the real situation of vulnerable groups within this society. As a matter of fact only two shadow reports¹⁵⁴ to the Committee which supervises the implementation of the International Convention on the Rights of the Child produced by '*Sentro di Informashon I Formashon na Bienestar di Mucha*' (SIFMA)¹⁵⁵ and one to the Committee on the Women's Convention by Caribbean Association for Feminist Research and Action (CAFRA) have been presented thus far.

The report compiled by CAFRA Curaçao on the third periodic State-report, entitled 'Emancipation policy in the Netherlands Antilles: Still an illusion',¹⁵⁶ was presented to the Committee in 2001. This is a remarkable performance considering the problems which CAFRA encountered.¹⁵⁷ I have to stress that the identified points of concern and requests are still valid in today's society.

It appears that this report was compiled without consideration of the State-report prior to its submission to the Committee.¹⁵⁸ This underlines the lack of communication, coordination and cooperation between the NGOs and government departments to a certain degree. On the other hand, I did encounter information that the Executive incorporated some of the efforts and contributions by CAFRA in its own report. The intended cooperation between CAFRA and the Executive on the training of law enforcement officers on the

149 CEDAW/C/NLD/CO/5/Add.1, 2012, para. 9.

150 AA/Follow-up/Netherlands/53, pp. 1, 3.

151 Ibid.; see also CEDAW/C/NLD/CO/5/Add.1.

152 The Kingdom complied in September 2013. Additional information followed in October 2013. See CEDAW/C/NLD/CO/5/Add.1, 2013; CEDAW/C/NLD/CO/5/Add.2, 2013.

153 Connors 2012, pp. 505-507.

154 The shadow reports for the CRC of 2001 and 2008 are available on www.sifma.an, last visited on 15 April 2015.

155 SIFMA is a NGO which performs tasks in the area of adult and pre-schooling education to daycare teachers of small children. Formally, it has no real tasks in the area of the protection of the rights of children. It has, modelling an umbrella organisation, compiled information on the situation of children in the former Netherlands Antilles from the NGOs operating in the field of the protection of children's rights.

156 Henriquez & Martis 2001.

157 The report contained only information on the situation of women in Curaçao as the organisation was unable to establish chapters on and communication with the other islands of the former Netherlands Antilles due to financial and infrastructural constraints.

158 Henriquez & Martis 2001, p. 2.

issue of gender-based violence was acknowledged.¹⁵⁹ As a matter of fact, CAFRA gave this training in 2005, together with other governmental agencies and NGOs, seeing the then future introduction of the instruction of the Procurator General (PG) of 2006 on domestic violence.¹⁶⁰ Based on this, I deduce that CAFRA was in one way or another involved in the execution of (part of) the policy of the Government, at least in the area mentioned, and that at some time it was informed about governmental programmes in this area.

The requests submitted by CAFRA suggested balancing among the actors involved. This is not surprising, as it was pointed out by the collaborator of the Department of Foreign Affairs of Curaçao that the periodic reports are compiled based on the information made available by governmental agencies and NGOs, including CAFRA, while no effective dialogue takes place during or after the compilation process between this department and the NGOs.¹⁶¹

The shadow report on the situation of local women contained five main focal points.¹⁶² Firstly, the deterioration of the position of women due to the economic crisis was mentioned. This concern was indirectly acknowledged by the Committee in its comments on the initial report¹⁶³ and the second and third reports,¹⁶⁴ as, in its opinion, the SAPs had had a negative impact on the overall position and development of Antillean, i.e. Curaçao women, 'which might prevent the effective implementation of projects aimed at the empowering of women'.

Secondly, measures taken to address women's issues on an ad hoc basis, without any structure, follow-up measures, monitoring or evaluation, were also a major point of concern. In this context, I can point out that the Committee had already in 1994¹⁶⁵ demanded insights into the status of the national machinery of the countries in the Caribbean. Moreover, its urgent request to the Netherlands in 2001¹⁶⁶ to provide economic support for programmes on capacity building for the achievement of gender equality proves that the Committee recognised these concerns.

Thirdly, the absence of the formulation of a gender-responsive policy, the non-implementation of any such policy and no network of experts to assist with gender policy and evaluation was also causing concern. This is to be seen together with the fourth point which upheld the existing necessity for mainstreaming gender issues within the selected programmes of development. With the request to develop programmes aimed at the elimination of gender stereotypes, the scrutiny of governmental policy and educational programmes on gender equality, and the conceptualisation and use of temporary special measures to strengthen the position of women, the Committee emphasised in 2010 that

159 CEDAW/C/NET/3/Add.1, p. 10.

160 The instruction of the Procurator General of the former Netherlands Antilles 2006 modelled that of the Dutch Board of Procurators General on the issue of domestic violence. See Reader '*Geweld in de relationele sfeer*'. *Opsporing, vervolging en hulpverlening*, Willemstad, Curaçao, 13 juni 2005; Press release '*Kua parlamentario ta para pa e derechinan di hende muhé i ta hasi pregunta na Minister di hustisia tokante e seri di asesinato kontra hende muhe?*', J. Henriquez, (no date).

161 Information obtained from Mrs D van der Veen, on 10 August 2012.

162 Under each point of concern CAFRA formulated a request directed to the Committee for the Government of the former Netherlands Antilles.

163 UN Doc. A/49/38, 1994, paras. 312, 316.

164 UN Doc. A/56/38, 2001, para. 227.

165 UN Doc. A/49/38, 1994, para. 312.

166 UN Doc. A/56/38, 2001, para. 228.

gender mainstreaming in the countries within the State-party should take place. And this ought to be followed by an assessment of the impact and effectiveness of these measures.¹⁶⁷

Lastly, the limited resources and efforts of NGOs and community-based organisations were included. These issues were undoubtedly addressed by the Committee in its concluding comments of 2010,¹⁶⁸ where it applauded the intentions of the then federal Executive to support NGOs, particularly in regard to the compilation of shadow reports. So, the points of concern voiced by CAFRA were indeed dealt with by the Committee in its respective concluding comments on the reports of the former Netherlands Antilles in the course of time.

Furthermore, the report also contained details on the specific areas of concern such as trafficking in women, prostitution, health, AIDS/HIV, teenage pregnancy, violence, education and labour. CAFRA formulated several requests for the Committee.¹⁶⁹ Additional requests were formulated for the Executive concerning actions that had to be complied with by the Executive, according to CAFRA.¹⁷⁰ The issues of gender-based violence and human trafficking were thankfully dealt with by the Committee several years later. The Government was asked in 2010¹⁷¹ to enforce adequate legislation to protect women against these forms of ill-treatment, and to inform the Committee on the matter in a follow-up report in 2012. The necessary legal measures were introduced by the legislature of Curaçao in 2011.¹⁷²

Thus, important subjects regarding gender and women's issues were underlined by CAFRA. Its efforts which led to this shadow report were unprecedented and without any question valuable.

§ 11.11 Communications: case-law under the Optional Protocol

Communications on infringement of fundamental rights and freedoms committed by a State-party can be submitted by the alleged victim(s)¹⁷³ to the Committee after the enactment of the Optional Protocol in the concerned State; however, violations experienced by victim(s) prior to the ratification or accession are also admissible as long as the effects are still felt or visible.

167 CEDAW/C/NLD/CO/5, 2010, paras. 23, 25, 33.

168 Ibid., para. 21.

169 For the general requests, see Henriquez & Martis 2001, pp. 5-8.

170 The requests concerned areas like (a) in-depth research into the effect of the absence of payment of alimony for children, in particular for children in female-headed households; to provide information (b) on, inter alia, the policy on the issue of trafficking of women and on legal measures to protect illegal immigrant women from this type of abuse; (c) on the policy on human and labour rights of immigrant sex-workers; (d) on governmental priorities on health policies, especially in regard to the AIDS/HIV programme; (f) on the priority regarding the policy on teenage pregnancy, sexual education and the measures the Executive will take to ensure the work of NGOs in this field; (g) on policy directed towards the prevention of violence against women; and (h) on the development of effective instruments to increase the participation of girls and women in technical professions, and men and boys in the sharing of household responsibilities and child rearing. Henriquez & Martis 2001, pp. 9-13.

171 CEDAW/C/NLD/CO/5, 2010, paras. 27, 29.

172 CEDAW/C/NLD/CO/5, Add.1, 2012, paras. 4, 9.

173 A person has to qualify as a victim under Art. 2 Optional Protocol, otherwise that person's petition will not be considered by the Committee. The so-called '*actio popularis*' does not come within the scope of this provision. This position has been confirmed by the Committee in CEDAW/C/56/D/44/2012 (*M.K.D.A.-A. v Denmark*), para. 6.5.

Since the ratification of the Optional Protocol by the Kingdom in 2002¹⁷⁴ several communications have been submitted to the Committee against the Kingdom. As of April 2014 the Committee has examined a total of 44¹⁷⁵ petitions on their merits. By 2010, on the occasion of the tenth anniversary of the enactment of the Optional Protocol to the Women's Convention, an expert meeting was organised in the Netherlands on those communications which had by then been reviewed by the Committee. The main issues of the 13 examined cases were described and discussed, with the objective of providing further information on the operation of the communications scheme and on the case-law developed by the Committee.¹⁷⁶

Although many cases were considered to be inadmissible by the Committee, enough cases were viewed by the Committee from which some general conclusions on the effectiveness of the protection provided to women through the Optional Protocol can be abstracted. In the case of the Kingdom, a couple of cases¹⁷⁷ have been viewed by the Committee on their merits where it was determined whether a violation of rights of women had occurred or not. Generally speaking, in most cases the concerned State-parties address the issue of the admissibility of the claim, rather than engaging in handling the merits of the cases as such.¹⁷⁸ Overall and as noted by Connors, the Committee has a tendency, with the exception of domestic violence cases, to be very conservative in its approach on the criterion concerning exhaustion of domestic remedies¹⁷⁹ for the admissibility of petitions.¹⁸⁰

Considering the main objective of this investigation, some of the cases where the implementation of the selected provisions of the Women's Convention, Articles 5 and 16 Women's Convention, by a State-member, were viewed by the Committee, are discussed below. Through these cases it can be established whether gender-stereotypes and socio-cultural perceptions have influenced the protection to which presumed victims were entitled from the State-Government against ill-treatment by State-agencies and third parties. The possible negligence in relation to ensuring the position of women in the family law of a concerned State-party is considered as well. With this exercise I will be able to determine how the rights in the provisions concerned have been protected and to ascertain whether local women have sufficient international legal mechanisms at their disposal against the abuse they suffer, abuse which is based on gender-stereotypes and fixed parental roles, and to consider how the judiciary and legal practitioners should use these instruments to further the protection offered to women. Moreover, with the *Fundashon Kresh Montagne* case of 2012, it became evident to me that the judiciary can utilise mechanisms provided

174 For short elaborations on the working of the Optional Protocol in (the Kingdom of) the Netherlands, see Van Leeuwen 2004 and De Boer 2003.

175 For an overview of the decisions see www.ohchr.org, last visited on 19 April 2015.

176 'Verslag Expert bijeenkomst Facultatief Protocol VN-Vrouwenverdrag', Vereniging voor Vrouw en Recht Clara Wichman, 15 September 2010.

177 See e.g. CEDAW/C/36/D/3/2004 (*Ms. Nguyen v The Netherlands*), CEDAW/C/42/D/15/2007 (*Ms. Zhen Zhen Zheng v The Netherlands*), CEDAW/C/57/D/39/2012 (*N. v The Netherlands*).

178 Vereniging voor Vrouw en Recht Clara Wichman, 'Verslag Expert bijeenkomst Facultatief Protocol VN-Vrouwenverdrag', 15 September 2010, pp. 8-16.

179 See e.g. CEDAW/C/50/D/26/2010 (*Guadalupe Herrera Rivera v Canada*); CEDAW/C/53/D/38/2012 (*Mr. J.S. v United Kingdom of Great Britain and Northern Ireland*); CEDAW/C/56/D/29/2011 (*Maimouna Sankhé v Spain*).

180 Connors 2012, p. 639.

by treaty-based bodies to review local cases in which rights of vulnerable individuals are violated based on wrongful socio-cultural perceptions.¹⁸¹

§ 11.11.1 Admittance and reviewing of cases of gender-stereotypes

In the *Ms. B-J v Germany* case¹⁸² the petitioner claimed to have been the victim of a violation of the Convention. As an elderly divorced woman she had suffered from gender-based discrimination under the statutory regulation regarding the law on the (financial) consequences of divorce. Since her divorce, which took place prior to the enactment of the Optional Protocol, she had continued to be affected by those regulations.¹⁸³ The State-party objected that the communication was inadmissible on, inter alia, the grounds of the non-enforcement of the Optional Protocol, the insufficient substantiation of the complaint and the non-exhaustion of domestic remedies.¹⁸⁴ The second argument was also used in, inter alia, the *R.K.B. v Turkey* case¹⁸⁵ and the last mentioned in the *Karen Tayag Vertido v Philippines* case¹⁸⁶ and *Abramova v Belarus* case¹⁸⁷.

As a matter of fact, the argument of the ill-founding or non-substantiation of the complaint is often used by States to request a declaration of the inadmissibility of a petition. In the *Zhanna Mukhina v Italy*,¹⁸⁸ the *N. v the Netherlands*,¹⁸⁹ and the *M.S. v Denmark*¹⁹⁰ cases this led to the inadmissibility of the petitioners' complaints as they had failed to provide specific explanation on the alleged violation of their rights by the concerned States. In the *M.S. v Denmark* case the petitioner (and her family) claimed violation of her rights under inter alia Articles 2, 5 and 16 Women's Convention due to her deportation to her home country, where she has allegedly been the victim of sexual harassment. She was, however, unable to prove that the religiously-based sexual harassment she sporadically suffered would amount to gender-based violence.¹⁹¹

The Committee recognised, however, in the *Ms. B-J v Germany* case the inadmissibility of the complaint based on non-exhaustion of domestic remedies and the non-entry into force of the Optional Protocol for the State. It applied the '*ratione temporis*' principle as, according to the Committee, the financial consequences of the divorce did not continue after

181 In this case the persistence of and wrongful perceptions on the permissibility of physical punishment, i.e. abuse, of children in the private and educational sectors in Curaçao was considered. GHVJ 8 May 2012, LJN:BW8379 (*Fundashon Kresh Montagne*).

182 CEDAW/C/36/D/1/2003 (*Ms. B.-J. v Germany*).

183 Ibid., paras. 3.1-3.4.

184 Ibid., paras. 4.1-4.10.

185 CEDAW/C/51/D/28/2010, para. 7.8.

186 CEDAW/C/46/D/18/2008, paras. 4.1-4.2.

187 In this case the violation suffered by the victim in detention was addressed. The Committee viewed that the violation of the privacy and dignity of the victim, 'including inappropriate touching and unjustified interference with her privacy' by the hand of male prison staff of the detention facility, constituted sexual harassment and discrimination under Articles 1, 5 para. a Women's Convention and General Recommendation no. 19. The State had the obligation to protect the victim against the moral damage, the prejudice due to humiliating and degrading treatment suffered by the hand of its agents, while in custody. CEDAW/C/49/D/23/2009, paras. 6.2, 7.5 (*Abramova v Belarus*).

188 CEDAW/C/50/D/27/2010 (*Ms. Zhanna Mukhina v Italy*).

189 CEDAW/C/57/D/39/2012, paras. 6.10-6.11.

190 CEDAW/C/55/D/40/2012 (*M.S. v Denmark*); for a similar case consider CEDAW/C/55/33/2011 (*M.N.N. v Denmark*).

191 CEDAW/C/55/D/40/2012, para. 7.8.

the date of the enactment of the Optional Protocol. The Committee was not convinced that the proceedings were unreasonably prolonged or unlikely to bring relief.¹⁹² Two members of the Committee had a dissenting opinion here though. They considered that the claim was partly admissible as the negative (financial) effects of the divorce were still felt by the victim even after ratification of the Optional Protocol by the State. The claim was not viewed on its merits by the Committee, implying that a possible violation of, inter alia, Article 5 paragraphs a and b and Article 16 paragraph 1.c, d, g and h was not contemplated by the Committee.

§ 11.11.2 Gender-stereotypes in gender-based violence cases

The following cases I would like to discuss relate to severe forms of domestic violence suffered by the petitioners, where the States failed to provide adequate protection to them. In the *Ms. A.T. v Hungary*¹⁹³ case the State allegedly neglected its obligations under the Convention to provide effective protection to the victim and her children against the abuse by her common law husband. The petitioner requested the introduction of effective interim measures under Article 5 Optional Protocol in order to avoid irreparable damage to her person, which was honoured by the Committee.¹⁹⁴ The State did not raise preliminary objections against the admissibility of the complaint and it admitted that the domestic remedies proved not to be adequate to provide protection against domestic violence and ill-treatment.¹⁹⁵ It stated that it had been introducing several (legal) measures and actions to redress and ameliorate this situation.

In the two cases against Bulgaria¹⁹⁶ the State did contest the admissibility based on the argument that, inter alia, the allegations were ill-founded and not sufficiently substantiated. The *Ms. V.K. v Bulgaria* case concerned a Bulgarian woman who fled the country where she was residing with her children in search of suitable protection in her birth country, Bulgaria, against the physical and mental abuse she suffered from her husband. The State failed, however, to take appropriate measures to protect her, based on gender-stereotypes in protection order legislation and its wrongful application by the judiciary. She claimed violation of her rights enshrined in Articles 5 and 16 Women's Convention.¹⁹⁷ In the *Isatou Jallow v Bulgaria* case, which dealt with the abuse suffered by a foreign woman married to a Bulgarian national, the State also contested the admissibility based on the non-exhaustion of the domestic remedies. In both cases the State was sure that it had taken appropriate measures to implement its obligations enshrined in the Convention and to provide protection against ill-treatment to the women.¹⁹⁸

The Committee considered in the *Ms. A.T. v Hungary* case, however, that despite the fact the remedies had not been exhausted, the claim was admissible, seeing that the State did not contest the admissibility of the claim and considering the flaws in existing remedies in Hungary for protection and the extreme ill-treatment which the victim had had to endure.

192 CEDAW/C/36/D/1/2003, paras. 8.6-8.8.

193 CEDAW/C/36/D/2/2003 (*Ms. A.T. v Hungary*).

194 *Ibid.*, paras. 4.1-4.2.

195 *Ibid.*, paras. 5.6-5.10.

196 CEDAW/C/49/D/20/2008 (*Ms. V.K. v Bulgaria*); CEDAW/C/52/D/32/2011 (*Isatou Jallow v Bulgaria*).

197 CEDAW/C/49/D/20/2008, para. 3.11.

198 CEDAW/C/52/D/32/2011, paras. 4.1-4.8; CEDAW/C/49/D/20/2008, paras. 4.2-4.8.

It considered a delay of three years to provide protection an unreasonably prolonged delay under Article 4 paragraph 1 Women's Convention.¹⁹⁹ It came to the same conclusion in the *Isatou Jallow v Bulgaria* case, together with the consideration that it was convinced that the domestic proceedings would not have had the objective of protecting victims against the domestic violence they suffered.²⁰⁰

At the review of the merits of the *Ms. A.T. v Hungary* case the Committee came, inter alia, to the conclusion that the State had not complied in a satisfactory manner with the Committee's request to introduce interim protective measures and that the State had failed to fulfil its duties prescribed in the Convention and thereby had violated the rights of the alleged victim as stipulated in the provisions concerned. In regard to the violation of Articles 5 and 16 Women's Convention, the Committee pointed out that, as stated in General recommendation no. 19, 'traditional attitudes by which women are regarded as subordinate to men contribute to violence against them'. In fact, the case had revealed aspects of the relationship between the sexes and attitudes towards women which were valid in this particular country. So, a violation of the rights of the petitioner under these provisions was established.²⁰¹ Also, in the *Isatou Jallow v Bulgaria* case the State failed to act with due diligence to prevent the violation of the rights of the petitioner or to investigate or punish the acts of violence.²⁰² This was also underlined in the *Ms. V.K. v Bulgaria* case where the Committee stated that a narrow concept of the Court that domestic violence consisted of only physical abuse reflected a stereotyped interpretation of such violence.²⁰³

Consequently, the Committee formulated in the *Ms. A.T. v Hungary* case specific recommendations for the amelioration of the situation of the victim and general recommendations for the State.²⁰⁴ The State was obliged to provide the Committee with additional information on the actions and measures taken in accordance with these general recommendations, within a period of six months.²⁰⁵ It complied for the first time in 2005, and by 2006 the Committee concluded that the measures taken by the concerned State were sufficient.²⁰⁶

In both the *Ms. V.K. v Bulgaria* and the *Isatou Jallow v Bulgaria* cases the Committee stipulated one specific recommendation directed towards compensation for the harm suffered by the victim and several general recommendations for the State to, inter alia, introduce measures to protect women against domestic injustice and to ensure that courts apply the law in accordance with the obligations enshrined in the Convention.²⁰⁷

199 CEDAW/C/36/D/2/2003, paras. 8.3-8.6.

200 CEDAW/C/52/D/32/2011, paras. 7.3-7.6.

201 CEDAW/C/36/D/2/2003, para. 9.4.

202 CEDAW/C/52/D/32/2011, paras. 8.4-8.6.

203 CEDAW/C/49/D/20/2008, paras. 9.8-9.12.

204 CEDAW/C/36/D/2/2003, paras. 9.5-9.6.

205 Ibid., para. 9.7; this was also the case for the same State in CEDAW/C/36/D/4/2004 (*Ms. A.S. v Hungary*).

206 'Verslag Expert bijeenkomst Facultatief Protocol VN-Vrouwenverdrag', Vereniging voor Vrouw en Recht Clara Wichman, 15 September 2010, pp. 22-23.

207 CEDAW/C/52/D/32/2011, para. 8.8; CEDAW/C/49/D/20/2008, para. 9.16.

§ 11.11.3 Allegations submitted on behalf of (deceased) victims of extreme violations of rights

Two particular cases were submitted to the Committee by two Austrian NGOs in 2005 on behalf of the descendants of the deceased victims, under Article 2 Optional Protocol. The particularities of both the *Sahid Goekce v Austria*²⁰⁸ and the *Fatima Yildirim v Austria*²⁰⁹ cases lie in the gross violation of the rights stipulated in the Convention by the State as it neglected to provide effective protection to two victims against domestic violence which resulted in their murders. The communications were submitted after the deaths of the victims, on behalf of their descendants, although this possibility was not explicitly covered by the Optional Protocol. Both cases were considered to be admissible by the Committee and they were viewed on their merits. Seeing the similarities of the cases I contemplate only the merits of the *Sahid Goekce v Austria* case.

The allegations of the NGOs were directed to, inter alia, the flaws in the domestic law to provide adequate remedies for domestic violence suffered by the victim, the misconduct or negligence of the authorities to apply the necessary measures and the perceptions in the criminal justice system that domestic violence concerns a social or domestic problem that occurs only in certain social classes. They requested the Committee to command the State to introduce a ‘pro-arrest and detention’ policy which could provide effective protection to victims of domestic violence.²¹⁰ The State contested the admissibility of the claim on the grounds of non-exhaustion of domestic remedies and that the victim was to blame for the non-prosecution of her husband by the State. The proceedings before the Constitutional Court were in the States consideration not unreasonably prolonged and it could have provided her with the required protection if she had cooperated with the authorities.²¹¹

The Committee concluded, however, that the constitutional review, ‘in light of its abstract nature’, would not have been likely to have brought effective relief. Also, the remedy called ‘associated prosecution’ would de facto not have been available to the victim, so it was not a remedy that required exhaustion. The Committee considered that for a comprehensive model on domestic violence such as that of Austria to be effective, it should be supported by all State actors. In this case the authorities were accountable for failing to exercise due diligence to protect the victim.

Moreover, the Committee stated strongly that the perception of public authorities that the rights of the perpetrator ought to be respected no matter what, can never supersede the fundamental rights to life and physical and mental integrity of the victim. So, the State had violated the rights under several provisions of the Convention and General Recommendation no. 19. In regard to Article 5 it pointed out that, following the definition of discrimination in General Recommendation no. 19, the connection between traditional attitudes and the subordination of women and domestic violence had already been established.²¹²

As in both cases the same issues against the same State-party were addressed, the Committee formulated in both cases four identical general recommendations on the

208 CEDAW/C/39/D/5/2005 (*Sahide Goekce (deceased) v Austria*).

209 CEDAW/C/39/D/6/2005 (*Fatima Yildirim (deceased) v Austria*).

210 CEDAW/C/39/D/5/2005, paras. 3.1-3.10.

211 *Ibid.*, paras. 4.1-4.16, 6.7-6.9, 8.1-8.21.

212 *Ibid.*, paras. 12.1.2-12.2.

phenomenon of domestic violence.²¹³ The State concerned reported as prescribed in separated reports in 2008 on the progress made and on the (legal) measures introduced.²¹⁴

The last case that I would like to comment on here is the *S.V.P. v Bulgaria* case.²¹⁵ The petition was submitted by the mother of the young victim of an act of sexual violence on her behalf. While the underage victim suffered permanent (mental and 'moral') damage, the perpetrator received a suspended sentence based on domestic legislation that constituted discrimination against women and did not punish rape and sexual violence. Accordingly, the Committee concluded that this legislation breached the stipulations in the Women's Convention. The concerned provision in the law reflected 'harmful gender stereotypes', contrary to the obligation stipulated in Article 5.²¹⁶ After assessing that the State had infringed the rights of the victim enshrined in the Convention, the Committee declared that the State had an obligation to compensate the victim, to put in place the relevant legislation in accordance with the Women's Convention, and to report to the Committee on the progress it had made in this regard.²¹⁷

§ 11.11.4 Discrimination based on gender-stereotypes and fixed parental roles in family law

In the following cases, the *Groupe d'Intérêt pour le Matronyme v France*²¹⁸ and the *SOS Sexisme v France* cases,²¹⁹ complaints were presented against the State for alleged violation of Article 16 paragraph 1 (g) Women's Convention. Seeing the similarities between the claims, I will discuss only the merits of the *Groupe d'Intérêt pour le Matronyme v France* case here.

The petitioners argued violation of (Articles 2 and 5) Women's Convention by the State constituting discrimination against women through the law on the family name, as it established an inferior position for women in the transmission of the mother's family name to her offspring. It also contravened the rights laid down in Article 16 paragraph 1 (g) Women's Convention.²²⁰ The State argued the inadmissibility of the claim based, inter alia, on the reservation made to the concerned provision. According to the State the domestic law provided the petitioners with effective remedies and furthermore the alleged victims were not victims under Article 2 Women's Convention.²²¹

The Committee made clear, after reviewing the claim under Article 16 paragraph 1 (g) Women's Convention, its concern about the effectiveness of the domestic review under the French Civil Code. It considered that the domestic remedies, although not exhausted, were unreasonably prolonged and unlikely to bring relief to the victims.²²² In spite of this, it did not consider the petitioners to be victims under Article 2 Women's Convention as Article 16 paragraph 1 (g) Women's Convention aimed to protect married women and women living in

213 Ibid., paras. 12.3; CEDAW/C/39/D/6/2005, para. 12.3.

214 'Verslag Expert bijeenkomst Facultatief Protocol VN-Vrouwenverdrag', Vereniging voor Vrouw en Recht Clara Wichman, 15 September 2010, pp. 30-31.

215 CEDAW/C/53/D/31/2011 (*S.V.P. v Bulgaria*).

216 Ibid., paras. 9.4-9.11.

217 Ibid., para. 10.

218 CEDAW/C/44/D/12/2007 (*Groupe d'Intérêt pour le Matronyme v France*).

219 CEDAW/C/44/D/13/2007 (*SOS Sexisme v France*).

220 CEDAW/C/44/D/12/2007, paras. 3.1-3.6.

221 Ibid., paras. 4.1-4.4, 6.6.

222 Ibid., paras. 11.7-11.8.

de facto relationships. The petitioners did not qualify as such.²²³ Their communication was therefore considered to be inadmissible.

In its dissenting opinion a minority within the Committee saw the admissibility of the communication because of the discriminatory effect of the legal measure towards women. In the minority's opinion the complaint should have been reviewed on Articles 2, 5 and 16 paragraph 1 Women's Convention, as the law constituted for many reasons discrimination against women, such as, inter alia, 'the patriarchal view of fathers as head of family imposed by the State party during their childhood'.²²⁴

§ 11.11.5 Gender sensitiveness

In the following cases the degree of gender-sensitivity among branches of Government (in particular, the judiciary) is exposed. In the *Karen Tayag Vertido v Philippines*²²⁵ case a claim was presented against the State for the 'revictimisation' which the petitioner suffered at the hands of the State after she was raped. The State did not comply with its obligation to eradicate gender-based stereotyping in rape cases. It failed to provide protection against discrimination by public authorities, particularly the judiciary. There were numerous gender-based myths and stereotyping about rape cases used by the Court, such as a lack of physical resistance by the victim during the rape, which led to the acquittal of the alleged offender.²²⁶ The *R.K.B. v Turkey*²²⁷ case in its turn reveals an issue where the State failed to protect the victim against wrongful dismissal based on gender-biased and discriminatory accusations by her former employer that she was having an extramarital affair with a male colleague. The Courts failed in the proceedings to address the gender stereotypes about men and women, as shown by the acceptance of immoral behaviour from men who had extramarital affairs but not from women.

In its review of the *Karen Tayag Vertido v Philippines* case the Committee stated 'that it does not replace the domestic authorities in the assessment of the facts'. However, it emphasised that stereotyping does influence the rights of women to a fair trial and that the judiciary should be careful not to introduce an 'inflexible standard' on how women should react in situations of rape or gender-based violence. According to the Committee, pursuant to Article 2 paragraph f and Article 5 paragraph a Women's Convention, the State has an obligation to assess the level of gender sensitivity applied by the Courts in rape cases.²²⁸ The importance of this standpoint was affirmed in the *Ms. V.K. v Bulgaria* case, where the Committee pointed out that the lack of gender sensitivity led to the withholding by the Court of a permanent protection order for the victim, which was strengthened by the notion that domestic violence is a private matter that does not come under State control.²²⁹ Also in the *R.K.B. v Turkey* case the Committee pointed out that the Courts 'revealed their lack of

223 Ibid., paras. 11.10-11.13

224 Ibid., para. 12.13.

225 CEDAW/C/46/D/18/2008 (*Karen Tarag Vertido v Philippines*).

226 Ibid., paras. 3.1-3.9.

227 CEDAW/C/51/D/28/2010 (*R.K.B. v Turkey*).

228 CEDAW/C/46/D/18/2008, paras. 8.2-8.4.

229 CEDAW/C/49/D/20/2008, para. 9.12.

gender sensitivity. (They) failed to give due consideration to the clear prima facie indication of infringement of equal treatment obligation in the field of employment.²³⁰

In the *Karen Tayag Vertido v Philippines* case the Committee concluded that the assessment by the judiciary was influenced by numerous stereotypes connected to rape cases. This was also underlined in the *K.B. v Turkey* case, where wrongful gender stereotypes on the acceptance (or otherwise) of extramarital affairs among the workforce was addressed.²³¹ The Committee considered in both cases that the States concerned had neglected to fulfil and had violated the obligation enshrined in the relevant provisions of the Convention, particularly Article 5 paragraph a Women's Convention.²³² Accordingly, specific recommendations on the compensation for the victims and general recommendations on, inter alia, the introduction of 'appropriate and regular training' to legal practitioners was suggested.²³³

§ 11.12 The inquiry: Ciudad Juarez case

The only inquiry conducted thus far by the Committee on alleged gross and systematic violation of women's rights regards the cases of the abduction, rape and murder of women in the Ciudad Juarez area of Chihuahua, Mexico. The request for this was submitted by two NGOs and this led to an investigation of the allegations by two members of the Committee.²³⁴ The Government of the State-party concerned, NGOs and individuals provided additional information on the matter.²³⁵ The report on the result of the inquiry by the experts contained extensive information on the method of work applied by the assigned experts and general information on the context and the evolution of the situation in Ciudad Juarez. Insights were given into the economic, social and cultural factors which led to and influenced the grave abuses and violence suffered by young women, that resulted in their murders and disappearances. This situation constituting violations of the Women's Convention went largely unpunished for more than a decade.²³⁶ Hence, according to the NGOs which submitted the request, the State had failed to fulfil its obligations under this Convention, and it was considered by many that the measures taken to prevent these violations were ineffective. The occurrences created a climate of impunity as well as a lack of confidence in the justice system. The campaigns conducted by the State largely failed to bring about decisive changes in social and cultural patterns of conduct of men and women.

During the visit of the experts to the territory of the State-party, several NGOs and relatives of the victims gave their appraisals and testimonies on way in which the State-party had coped with these horrific (social) phenomena.²³⁷ Civil society organisations expressed their concerns about the serious shortcomings within the justice system when addressing gender-based violence.²³⁸ Considering the information provided by the assigned experts, the Committee was able to formulate its conclusions and recommendations on the matter.

230 CEDAW/C/51/D/28/2010, para. 8.6.

231 Ibid., para. 8.7-8.8.

232 CEDAW/C/46/D/18/2008, paras. 8.2-8.7; CEDAW/C/51/D/28/2010, para. 8.8.

233 Ibid., paras. 8.9; Ibid., para. 8.10.

234 Connors 2012, p. 659.

235 CEDAW/C/2005/OP.8/MEXICO, paras. 1-8.

236 Ibid., paras. 22-47, 61-131.

237 Ibid., paras. 48-60, 132-225.

238 Ibid., paras. 226-254.

§ 11.12.1 *Recommendations and conclusions on the inquiry case*

The Committee expressed its concerns about the serious and systematic violations of women's rights that had lasted for a long period of time, and about the fact that the State-party was unable to prevent these severe violations, punish the perpetrators and provide the relatives of the victims with the necessary assistance.²³⁹ It made numerous recommendations to the State-party involved, which were divided in three categories. The first category consisted of general recommendations on, inter alia, compliance with the Convention and the incorporation of a gender-perspective in the State's investigations and policies.²⁴⁰

In the second category, which considers recommendations on the investigation of the crimes and punishment of the perpetrators, the Committee formulated various recommendations. Its suggestions included (1) coordination and cooperation between the authorities, (2) the investigation and punishment of negligence and complicity of public authorities in the disappearances and murders of women, and (3) the setting-up of warning and emergency search mechanisms for cases involving missing women and girls in the specific territory.

Finally, the Committee made recommendations on the prevention of violence, on guaranteeing security and on promoting and protecting the human rights of women. It suggested the organisation of massive, immediate and ongoing campaigns to eliminate discrimination against women, to promote equality between the sexes, to contribute to the advancement of women, and to institute and strengthen violence prevention programmes and policies. The Committee also recommended the adoption and promotion of measures to restore the social fabric and to create conditions to guarantee that women in this territory are able to exercise their fundamental rights and freedoms stipulated in the Women's Convention.²⁴¹

In response to the findings of the Committee, together with the recommendations and in accordance with rule 89 paragraph 2 Rules of Procedure, the State-party received an opportunity to submit its observations to the Committee.²⁴² The State acknowledged the (social and cultural) problems of Ciudad Juarez. It noted that various (legal) measures had been taken to effectuate and promote the advancement of women in accordance with the Women's Convention. It was interesting to note the acknowledgement by the State of the persisting social situations, stereotyped and cultural perceptions and customs, which perpetuated the underdevelopment of women in the mentioned territory; this was a situation which, according to the State, could not be eradicated instantly. Consequently, various measures were introduced to effectuate the much needed structural changes. Thus, despite the many deficiencies in the Mexican system, the State of Mexico persists with its efforts on the amelioration of the situation of women in accordance with the Convention.

§ 11.13 Conclusion

Since 2010, Curaçao has had an obligation to realise the rights enshrined in the Women's Convention and to present the results of these efforts in periodic reports pursuant to

239 Ibid., paras. 259-261.

240 Ibid., paras. 263-279.

241 Ibid., paras. 287-290.

242 Ibid., pp. 48-93 (Part two).

Article 18 Women's Convention. The revision of the submitted State reports is entrusted to a highly respected, independent and quasi-judicial Committee set up under Article 17 Women's Convention and acting according to its Rules of Procedure. The supervisory authority of the Committee has been strengthened with the communication and inquiry procedures after the enactment of the Optional Protocol. In this chapter I examined the effectuation of these instruments as a means to empower women, as right-holders, and to make a link with human rights as a possibility for the effective realisation and strengthening of women's rights in accordance with the created framework starting off from a human rights-based perspective.

The concluding comments of the Committee on the submitted periodic reports by the former Netherlands Antilles showed that Curaçao, as one of its successors, is confronting the challenges related to the effectuation of the Women's Convention. These reports gave insights into what is expected of the State-Government and as to the kind of information that it has to submit to the Committee. The five Antillean reports were compiled under the coordination of the Directorate of Foreign Affairs of the Netherlands Antilles, which came under the Minister of General Affairs and External Relations, while the Parliament did not have any input. Apart from governmental agencies, as duty bearers, the NGOs also provided information for these reports. There was no real dialogue during or after this process between the governmental departments and the NGOs involved. Unlike in the Netherlands where the presentation of the report to the Parliament prior to its submission to the Committee is mandatory, in the Antillean case such an act, which could have supported the quality of the reports and the involvement of the Parliament, was not provided for. The Committee currently expects the involvement of the Curaçaoan Parliament in this reporting process. Furthermore, this issue is explicitly requested in its concluding observations on State-reports. Thus, it remains to be seen whether Curaçao has complied with this in its first report which was due in February 2014. To my knowledge this has not been the case.

In comparison with many other small Caribbean States, the former Netherlands Antilles did, with the exception of its fourth report, comply with its reporting obligation on time, despite the flaws which the reports contained as they did not always comply with the guidelines for the compilation of State-reports and the requests of the Committee. The timely compliance is one of the advantages it had as being a part of the Kingdom. On the other hand, many of the concluding comments of the Committee on the reports of the State-party are concerned with the situation of women in the Netherlands, while few specific indications were incorporated for the Caribbean countries, particularly in comparison with the concluding comments on reports of small States like Barbados.

I have to note that the Committee expected overall a more in-depth analysis and result-oriented description of the legal and policy measures and of the national machinery from the Antillean Government. The Committee did not like the fact that it had to consider a report in the absence of Antillean representatives. It therefore urged the State-party to (financially) support the Caribbean countries in the implementation of the obligations set out in the Convention. The Committee was also not convinced that equality among the genders in these territories had yet been achieved. This underlines the importance of diligent compliance with the reporting obligation by State-parties, as through it the State-party concerned receives critical suggestions on the way it is supposed to realise women's rights domestically.

A noteworthy recommendation for the Kingdom concerns the direct applicability of the substantive provisions of the Women's Convention in its legal systems. This illustrates the dissatisfaction of the Committee with the way in which this State-party has dealt with the direct incorporation of the Women's Convention in its legal system thus far. The Committee also appointed the Kingdom to be ultimately accountable for the realisation of women's human rights in the West and at all governmental levels, pursuant to the Charter. The petition to the former Netherlands Antilles to upgrade its national machinery for the advancement of women on the occasion of its constitutional reforms demonstrates that the Committee had its doubts about the existence of an effective machinery in the West. The request to the Kingdom to strengthen its economic support to the Caribbean countries for programmes on capacity building to improve the achievement of gender equality is another point where (in)direct attention was paid to the empowerment of local women. This request for support by and accountability of the State-party is understandable and justified. Another issue concerned the approval of the Committee for the intention of the federal Executive to support NGOs with the required funds for the compilation of shadow reports. The Executive of Curaçao as duty bearer had a major obligation in this respect. The request for the entering of a follow-up report on measures on human trafficking and domestic violence, which was honoured in 2012, formed another challenge. Through this instrument additional pressure was put on the State-party to pay attention to specific subjects and areas of concern. All this implies that Curaçao currently has an obligation to attend to these challenges diligently and rapidly, as the Netherlands Antilles largely failed to do so.

Regrettably, until today only one shadow report has been submitted through which the Committee could have obtained a picture of the real situation of local women. With its report of 2001 CAFRA presented more accurate information on the situation of this vulnerable social group. This NGO was very critical on of the performance of the Antillean Government on women's and gender issues. To my knowledge, no other shadow report has been submitted to the Committee since then. Although the Women's Development Centre (SEDA) expressed its intention to compile a shadow report on the upcoming State-report of Curaçao of 2014, I did not encounter any real signs of compliance with this task.

After contemplating the submitted reports, the concluding comments of the Committee and the shadow report of CAFRA, I must conclude that no effective effectuation of women's rights benefiting local women has taken place. Many reasons can account for this omission, such as legal and financial backwardness due to the negative effects of the SAPs, but the fact is that there is a lack of accessible domestic instruments to stimulate and enable the empowerment of women. This is partially remedied through other protection mechanisms under the Women's Convention.

Through the communication procedure the Committee has been receiving written petitions of identified (groups of) individuals on alleged violations of their rights under the Women's Convention. The submission and consideration of communications are permitted under strict conditions. Case-law has shown that State-parties tend to use the criteria under Article 4 Women's Convention to avoid an examination of the submitted cases by the Committee. The exceptions are cases where the Committee considers that the domestic remedies are unreasonably prolonged or will not bring any relief to the victim, as has been shown in the *Ms. A. T. v Hungary* case.

After the admittance and examination of the merits of a complaint, the Committee presents its recommendations to the State-party based on its findings if this is deemed necessary. This was the case in the *Karen Tayag Vertido v Philippines*, *Ms. A.T. v Hungary*, *Sahid Goekce v Austria* and *Ms. V.K. v Bulgaria* cases among others. Overall, the procedure has gained much relevance through the case-law of the Committee, especially for domestic violence cases which are viewed by the Committee in a rather progressive manner. This was demonstrated in the *Sahid Goekce v Austria* and *Fatima Yildirim v Austria* cases where petitions submitted on behalf of two victims, who had died as a result of domestic violence, were admitted, although this possibility was not explicitly created in the Optional Protocol. Furthermore, in gender-based violence cases the Committee often includes General Recommendation no. 19 and it emphasises the fact that traditional attitudes and the subordination of women increased violence against women. In many cases violations of Articles 5 or 16 Women's Convention are claimed and looked at by the Committee, in particular Article 5 Women's Convention, which is used as a review instrument, and is provided with direct enforceability.

Under Article 8 Optional Protocol the mechanism is enacted whereby (members of) the Committee can conduct an inquiry into grave or systematic violations of women's rights in a State. The only inquiry conducted thus far is the Ciudad Juarez case in Mexico. The Committee transmitted, after the investigation, its findings to the involved State-party. It became clear that the reported abuse suffered by women was a result of social situations, gender stereotypes and fixed gender roles which perpetuated the underdevelopment of women, a situation which was admitted by the State-party concerned.

In conclusion, the mere existence of these instruments implies that local women, as right-holders, have tools that strengthen their protection against violation of their rights as set out in the Women's Convention. They only have to be aware and conscious of their possibilities and address the responsible authorities and State-agents accordingly. Although court cases might look like lengthy procedures, as the domestic remedies ought to be exhausted before an alleged violation can be viewed by the Committee, the simple fact that the possibility of further protection exists beyond the boundaries of Curaçao should strengthen and empower women's sense of security and confidence. It is here that I encounter the main problem which local women face: the vast majority are not aware of the instruments provided for in the Convention. So, legal practitioners should be more diligent concerning the protection which the Convention and the Optional Protocol offer and use them in cases where the rights of women have allegedly been violated, as is rightly suggested by the Committee.

Seeing the many cases of (severe) domestic violence registered recently in Curaçao and the discrimination which women suffer daily based on the persistence of gender-stereotypes, I strongly argue for the proper application of the mechanisms created by the Women's Convention and its Optional Protocol. Even potential cases of gross and systematic violation of women's rights domestically can be submitted to the Committee. NGOs, other groups of interests and individuals should become more aware of the other mechanisms created in these international instruments, apart from the State-report mechanism, and use them in a way that benefits local women. NGOs should use the power which they have by submitting shadow reports that provide the Committee with more realistic data on the situation of women and oblige the State-Government, as duty bearer, to keep its promise to (financially) support NGOs and local women.

Chapter 12

CONCLUSION AND RECOMMENDATIONS

§ 12.1 Introduction

In this study I explored the application of the Women's Convention in Curaçao as a way to further the emancipation and advancement of its women. Since 10 October 2010, the island has embarked upon a new governmental and emancipating journey. Curaçao, as part of the Kingdom, is bound by the obligations set out in international human rights conventions adopted by this State-party. However, the fundamental rights and freedoms of its inhabitants are firstly guaranteed in the Constitution of Curaçao of 2010.

I set out from the premise that the position of women at the domestic level deserves improvement, as women like men have the right to live a dignified life free from any form of discrimination and ill-treatment. The investigation was centred around the question as to whether international human rights law is effective in achieving the strengthening of the position of this vulnerable societal group; a position which is determined by socio-economic, cultural and religious perceptions and ideas, backed up by male-oriented legal and social constructs. The implementation of the Women's Convention, in particular Articles 5 and 16, is examined to confirm whether or not the Convention can help to sustain and transform the further development of local women.

The central question(s) of the research was:

How should the Women's Convention be implemented in the legal (and social) system of Curaçao to create positive conditions to improve the situation of women in the particular cultural and social context of Curaçao, and how can, in particular, Articles 5 and 16 of the Women's Convention be instruments to accomplish this?

This question was examined through the following subsidiary questions:

1. Which historical, socio-economic and cultural developments have determined the position of Curaçaoan women?
2. What have been thus far the efforts of State-institutions and the women's movement in the promotion of women's rights at country level?
3. What was and is the practical meaning and added value of (inter)national equal treatment norms, such as those under the Women's Convention, for the protection offered to local women?
4. How can compliance with the norms under Articles 5 and 16 Women's Convention support the further development and protection of Curaçaoan women?

5. What is the potential role of State-agencies and other actors such as (women's) NGOs for the realisation of women's (human) rights in Curaçao?

The central question was approached through several main focal points, which rest on the two pillars of the investigation which are State accountability, from above, and the role of NGOs, from below, for the further advancement of Curaçaoan women. Through the 'Participation, Accountability, Non-discrimination, Empowerment and Linkage with human rights' (PANEL) analysis derived from the human rights principles for the respect, protection and fulfilment of women's (human) rights, I examined how far the real emancipation of women at a local level has been realised and accomplished. The elements for the applied human rights-based approach on development programmes were put in the local context and reviewed on their merits. In Chapters 2 to 4 of my investigation the general (social and legal) parameters for the framework were discussed. Chapters 5 to 11 contained the conceptual framework and the application of the elements required for the promotion, protection and fulfilment of women's rights at country level. Consequently, I give below my final assessment of the findings and my recommendations for the amelioration of the promotion and protection of women's human rights at country level.

§ 12.2 A situational and contextual assessment

My assessment of the socio-cultural context showed that the plural Curaçaoan society is a society tormented by many factors related to its colonial past, imperialism, ethnicity, unequal socio-economic structures and political (power) structures, which have left deep scars on its people. Since its discovery by the Spanish in 1499, and afterwards through the occupation by the Dutch in 1634, unjustified distinctions, racial-based inequality and discrimination became common and internalised patterns, which have formed and transformed interaction between the social groups. Since 2010 the island has embarked on a transition process towards self-governance and now has its own constitutional framework including a list of fundamental rights and freedoms. Prior to this, the governmental and political structures of which it formed a part have altered on several occasions in the course of time.

Curaçaoan society is, in a socio-cultural sense, a very racial, patriarchal and segregated society. The unequal power relations between the ethnic groups find their origin in the social classifications created under colonial rule, and in discriminatory, oppressive and restrictive practices imposed by the (Catholic) Church and afterwards by the Royal Shell Oil Company. The emancipation of 1863 and the industrialisation since 1915 did not alter the old colonial patronage system, the religious-based doctrine and harmful patterns of conduct. They were, to a certain degree, adopted by the 'new' elite, particularly after the disturbances of 30 May 1969.

Although the Afro-Curaçaoan descendants form the largest ethnic group, they possess in general the lowest socio-economic status. Progressive developments after industrialisation and after 30 May 1969, made upward mobilisation feasible for some, yet the majority of the black population remained impoverished and backward. In this multiform society, race, ethnicity, gender, religion, internal and external feelings of inferiority, sub-cultures of fear, mistrust, silence and institutionalised violence determined the social interaction, integration and communication between the social groups. The vulnerable social classes

are marginalised, excluded and victims of deprivation and discrimination. Gender relations find their origin in these social structures.

The position which local women occupy is formed and partly defined by the multiple discrimination which they suffer, by unequal treatment and by the exploitation of their labour and sexuality. Despite the fact that Curaçaoan society qualifies as a female-oriented society due to various factors, such as interregional migration and women's centrality in the family scene, women remained a very weak social group with imposed misconceptions about the realities of their situation stemming from colonialism. Although stigmatised by many as independent and strong individuals, due to the forceful way in which they carry excessive responsibilities for their families and society, their overall lack of economic resources, knowledge, (political and economic) influence and self-confidence suggests the contrary. The degree of deprivation of an individual woman is partly dependent on her social class, educational level and external features.

It became clear to me that one of the many explanations for women's centrality in the private domain is to be found in the colonial social structures where the female slave functioned as the only stable factor. As far as the black male slave was concerned, he was stripped of his masculinity and operated in a violence-oriented slave-society, and after emancipation and industrialisation he was characterised by his overall weak socio-economic position. Socio-economic, ethnic and political factors have defined gender relations and family structures. As a matter of fact, the gender-based discriminatory and distinctive mechanisms imposed by the Royal Dutch Shell Oil Company, the old patronage system and religiously-based doctrine influenced afterwards not only the public domain, but also the private domain. These factors led to the marginalisation of (lower class) women and the widening of gender-based inequality and discrimination.

Government policy for centuries was not directed at an inclusive social approach for the emancipation and well-being of the population, but towards exclusion and oppression. Meaningful changes in policies towards social well-being were only initiated in the 1970s. The safety nets created then partly crumbled in the late 1990s with the introduction of austerity measures in the form of Structural Adjustment Programmes (SAPs). Furthermore, development aid from the Netherlands since the 1960s partly led to a dependent mentality among subsequent Governments and the population, where the social well-being and development of the population became co-dependent on a foreign actor (namely, the Netherlands). At the same time a lack of interest and involvement in the (political and social) developments of the island by the Kingdom (i.e. the Netherlands) was noted. The socio-economic disparity after the departure of the Royal Dutch Shell Oil Company in 1985 aggravated by the measures imposed through IMF's Structural Adjustment Programmes led to an exodus, which the arrival of new (illegal) migrants could not balance as many of them ended up in the lower levels of society and many of them became victims of multiple forms of ill-treatment, discrimination and exclusion.

The migration waves recorded throughout the history of Curaçao did not modify the situation concerning the real assimilation, acceptance and integration among the social and ethnic groups. Disparity and differential treatment resulted in an excessively unequal division of wealth and progress. Currently, a significant part of the population suffers silently under (extreme) material and mental poverty, exclusion and deprivation, while a relatively small group is extremely prosperous and well-educated. The socio-economic and political

factors described determine the way in which the social groups interact with and perceive each other.

The Western way of life as a consequence of the initial prosperity brought about by industrialisation, large-scale migration to the Netherlands afterwards and modern technological developments resulted in a more liberal attitude and morality, materialism and individualism in patterns of conduct, which is expressed particularly in the education of the younger generations but also in the decline in the care for the sick, the elderly and other vulnerable groups. An illegal drug-related economy and a sub-culture of (institutionalised) violence related to it, together with alcohol abuse and gambling as expressions of the frustration, deprivation, exclusion and backwardness among the less fortunate, manifested themselves.

The process of constitutional reforms between 2004 and 2010 resulting in the dissolution of the former Netherlands Antilles and the further involvement of the Kingdom (i.e. the Netherlands) in the internal affairs of the country through, inter alia, consensus-Kingdom's Acts, did not alter the disparity in patterns of conduct among the social groups. As a matter of fact, it aggravated the situation as multiple-based distinctions, differences and internal political struggles intensified. Moreover, the political and governmental instability noted since 2010, which was also a feature of the former Netherlands Antilles, has been adversely influencing the effectuation of progressive and transformative policies directed at the advancement of vulnerable social groups, such as women.

So, despite the fact that women, as rights holders, form the majority of the population, I can state that they are invisible, marginalised and not effectively protected against ill-treatment in this internally divided society. Women are disempowered and undervalued in this male-oriented society, where ironically the majority of black male is not really visible either. I am therefore convinced that the advancement of local women and their awareness of the ill-treatment they receive can be accomplished with the effective implementation of the Women's Convention and the 'soft law' of the Committee by all government agencies, from above, and NGOs and third parties, from below.

§ 12.3 The conceptualisation of human rights for a human rights-based approach

The reason I incorporated an extensive description of the dynamic and progressive development of international human rights law lay in the point of view that, for the effectuation of the human rights-based approach on the development of women at a domestic level, a thorough comprehension of human rights and their mutual interconnectedness is essential.

The conceptualisation and the process of recording human rights provide a comprehensive framework for the protection and development of vulnerable groups at country level. Although this process is inextricably linked with the advance of the modern Western world during the Enlightenment period, the contribution of the Ancient World, the Middle Ages and major world religions is acknowledged by many. The division that exists between the first two generations of rights is connected with this historical and philosophical background. The teachings of thinkers and scholars were essential for the formulation of the meaning of these rights. As the then liberal approach on human rights was confined to social ranks, classes, gender and ethnicity, the universal claim of human rights stayed

underdeveloped for a long time. Accordingly, the critical view and influence of the social movement and the socialist human rights discourse on this approach was crucial.

The recording of international human rights with a universal claim after the atrocities of World War II, and the rebirth of the concept of human rights as natural rights of individuals found its basis in the Atlantic Charter of 1941. With the establishment of the United Nations in 1945 the recognition of human rights in its Charter became a reality. The Universal Declaration of Human Rights of 1948, which came about many years after the French '*La Déclaration*' of 1789, and the setting up of the UN Commission on Human Rights led to the promotion of human rights standards and values at the international level. The International Human Rights Bill was followed by many other declarations, international and regional conventions. The universal claim obtained thereafter a boost from the struggle of former colonies for their right to self-determination, which led to the recognition of the third generation of human rights.

The strict distinction between the categories of human rights determined the degree of their effectuation by States though. After the recognition of the universality, indivisibility, reintegration, interconnectedness and intertwining of human rights in the Vienna Declaration and Programme of Action in 1993 this distinction was abandoned. Currently, the human rights discourse starts off from the interdependence, indivisibility and universality of human rights. The Women's Convention of 1979 is a perfect example of the acceptance of the interconnectedness of rights and of a progressive and holistic approach to them. Also, the adoption of an Optional Protocol to the International Convention on Economic, Social and Cultural Rights in 2008 supplies affirmation of this approach.

The universality of human rights is challenged though by the claim of cultural relativism, which defends the cultural, religious and traditional identity of non-Western societies against the liberal approach of universal human rights law. The wording of the Universal Declaration of Human Rights exhibiting a cross-cultural consensus suggests the commonality within human rights, regardless of a particular interpretation based on a societal context. Actually, a reconciliation between these approaches where they complement each other should be the point of departure for the effective fulfilment of human rights at the domestic level.

Challenges related to the respect, promotion and fulfilment of human rights at the international level arose after 11 September 2001. The approach of State-governments since then in their war against terrorism affected the human rights movement and discourse, as the violation of the fundamental rights of peoples in the name of national security, justice and world peace has had some negative impacts on the further development of human rights of weaker social groups within societies. With the reform of the international supervision and effectuation system of human rights of the United Nations through the creation of the Human Rights Council in 2005, the objective of strengthening the protection and implementation of human rights at this level has been achieved.

Curaçao as part of the Kingdom is bound by the obligations set out in the international human rights conventions to which this State is a party and to the norms and standards that stem from them. Also, regional human rights conventions, such as the European Convention on Human Rights, are effectuated at the domestic level based on, inter alia their territorial clause. The local inhabitants benefit from the protection which particularly this regional convention grants due to its effective implementation mechanism and case-law. With the application of several specific human rights conventions containing objectives to

protect vulnerable groups in Curaçao's legal system, the overall protection mechanism at the domestic level has been strengthened.

§ 12.4 The constitutional framework and the contribution of governmental agencies as duty-bearers: the Accountability aspect

Although the Kingdom is the State-party which participates at the international level, Curaçao is permitted to participate at this level, with its consent. As foreign relations is a Kingdom matter, for international engagements touching Curaçao's interests, Kingdom's governmental agencies such as the Council of Ministers of the Kingdom, pursuant to Article 3 paragraph 1 in conjunction with Articles 7, 10 and 11 paragraph 3 Charter are the actors competent and responsible for it. The participation of Curaçao in the concluding and execution of international agreements is ensured in Article 27 Charter. Only, when it regards economic and financial conventions, the more 'autonomous' regime of Articles 25 and 26 Charter applies, although under the strict conditions that the international agreements which Curaçao wants to engage in are not inconsistent with its ties within the Kingdom. This regime applies for other types of conventions as well.

Moreover if, according to the new Article 27 paragraph 3 Charter, the Caribbean countries do not comply in time with their international obligations by failing to enact legislation and measures for the realisation of obligations under a convention, and the interests of the Kingdom are affected by this, the Kingdom has the competency to act and intervene in their internal affairs to secure compliance with the international agreement.

The point of departure related to international human rights conventions is that the Kingdom adopts these conventions to be applicable in the entire Kingdom, with or without reservations for a particular territory. Since 2010 the human right conventions in force in Curaçao impose obligations on its governmental agencies for their realisation. The fulfilment, promotion and protection of human rights remain a domestic matter, although the domestic legal framework is supplemented by the supervisory mechanism granted to the Kingdom under Article 43 paragraph 2 Charter. Effectively, the foreign policy of the Kingdom in regard to international human rights law is determined by the Netherlands. And the approach of the Netherlands in this policy starts from its views, position, necessities and higher level of development, while the participation and views of Curaçao (Aruba and Sint Maarten) are often non-existent.

In the Kingdom's (i.e. Dutch) legal system international (human rights) law is directly applicable and binding after the conclusion of the international agreement or convention. This approach implies that the State-agencies of the countries have to conduct their actions in accordance with these agreements. However, for the protection offered to individuals by international human rights law a distinction in norms applies. In fact, it is the legal construct enshrined in Articles 3 and 5 Charter together with Articles 93 and 94 Constitution of the Netherlands, and not norms enshrined in Curaçao's Constitution, which regulates the enforceability of international (human rights) law in the domestic legal system of Curaçao benefiting the protection of inhabitants. Effectively, the construct provides for the review, by the judiciary, of domestic law and policies conflicting with international (human rights) norms that are binding on all persons. In cases of conflict the application of wrongful domestic law in a particular case is disregarded.

As in the Dutch legal system constitutional review following Article 120 Constitution of the Netherlands is not allowed, the review of Acts of Parliament on international human rights law that binds all persons forms a reinforcement of the Dutch protection system. The judiciary, acting as a 'quasi constitutional court', has to take account of the text, content and the wording of the provisions under the human rights convention concerned though. This system was used by the former Netherlands Antilles until 2010. If one begins with the interconnectedness, interdependence and indivisibility of human rights, such a system did not provide adequate protection to the local inhabitants bearing in mind their societal reality and needs.

In 2010, the legislature(s) concerned tried to provide some relief for the former review prohibition, affirmed in the '*Harmonisatiewet*' case of 1989, through the introduction of a partial (subsequent) constitutional review in Article 101 Constitution of Curaçao. This scrutiny competence does not constitute an innovation as Acts of Parliament were already reviewed on those provisions of international human rights law that are binding on all persons, which are often civil and political rights, while a stronger scrutiny mechanism in the form of a full subsequent constitutional review by a national Constitutional Court on all types of human rights law and in accordance with the 'soft law' of the treaty-based organs is required. Prior constitutional review, following the example of Sint Maarten, could also have brought additional relief. Another possibility would have been the enactment of a Kingdom's Act, whereby the judiciary has the power to scrutinise national legislation on Kingdom's law and international (human rights) law through the mechanism under Article 49 Charter. A broader protection system is necessary considering the severe infringement of the rights of the inhabitants that is manifested, and where internalised discriminatory patterns and a lack of accountability of local governmental agencies towards the population are present. So, I am of the view that, as long as there is no national Constitutional Court with full constitutional review powers, where State-agencies and individuals can submit claims to be reviewed on constitutional instruments and international human rights law applicable in Curaçao, the national protection system contains pitfalls.

In regard to the other possibilities at Kingdom's level, I have to conclude that the deficiencies within the Kingdom's structure make the strengthening and introduction of effective mechanisms of accountability, checks and balances and monitoring necessary. The establishment of a Kingdom's Parliament to monitor actions of the Kingdom's Executive on issues that touch the interests of the vulnerable Caribbean countries, and also the establishment of independent dispute institutions, pursuant to Articles 12a and 38a Charter, to address disputes between the Kingdom's (i.e. Netherlands) agencies and the Caribbean countries, particularly in regards to the interpretation of the Charter and their obligations under the Charter concerning the conclusion and implementation of international obligations would be first steps in the right direction. As long as these and other arrangements are not set up and Curaçao forms part of the Kingdom, the Executive of the Kingdom as the ultimate duty-bearer in the safeguarding of the protection and fulfilment of the rights of the inhabitants of Curaçao, has to assume a more prominent and stronger supervisory attitude towards the structural violation, negligence or non-compliance by the domestic governmental agencies, as duty bearers. This is particularly so when we consider the new supervision mechanisms in the consensus-Kingdom's Acts under Article 38 paragraph 2 Charter, in Article 27 paragraphs 2 and 3 Charter and in Article 43 paragraph 2 Charter,

and the line of reasoning that suggests that the realisation of international human rights is a Kingdom's matter, following the legal construct under Articles 3 and 5 Charter in conjunction with Articles 93 and 94 Constitution of the Netherlands. The Government of Curaçao, as a duty bearer, remains the first agency accountable for the realisation of rights and obligations under international human rights law; but when it fails the Kingdom has a responsibility to act.

Although Article 43 paragraph 2 Charter is not considered to be a self-executing provision, while being a harsh supervisory instrument, which touches the autonomy of the Caribbean countries, and having overall a very limited accountability scope, it gives the Kingdom the opportunity to act on structural infringements of human rights, and not only on the fields of good governance and legal security at national level. This mechanism becomes effective through the regimes of Articles 50 and 51 Charter that make intervention possible, whether on an incidental or structural basis, in the internal affairs of Curaçao. The Governor, as a Kingdom's institution, has a prominent role to play here. The argument that measures based on Article 43 paragraph 2 Charter, interfere with the powers of self-governance of Curaçao, has been since 2010 greatly mitigated by the (mandatory) cooperation and assistance constructs created by the enactment of measures like the (consensus) Kingdom's Acts at Kingdom's level, supervision provisions like Article 27 paragraph 3 Charter and those contained in the consensus-Kingdom's Act on Financial Supervision and Police forces. The (in)direct involvement of the Kingdom in the domestic affairs of Curaçao is herewith already a fact. Moreover, the mechanisms created in, inter alia, Article 27 paragraph 3 Charter, Article 13 paragraphs 5 and 6 consensus-Kingdom's Act on Financial Supervision and Article 52 consensus-Kingdom's Act on Police forces have effectively the same (legal) effect, which is the mandatory monitoring of internal affairs by the Kingdom through Kingdom's legislation where national State-organs have no influence whatsoever. The enactment of the Order in Council for the Kingdom containing instructions for the Executive of Curaçao to adapt its then (draft) budget and expenditure in 2012 was a vivid reminder of these powers of the Kingdom.

So, in my consideration, the regime of Article 38 Charter could also apply for the enactment of additional Kingdom's Acts or Mutual Agreements on socio-economic and educational areas, benefiting the population based on the cooperation approach currently applied in the Kingdom, as proposed by the Kingdom's Council of State. Human rights form the foundation for the protection and development of Curaçaoans and for the creation of an egalitarian society based on the rule of law and social justice. They should be guaranteed by all governmental agencies, including the Government of the Kingdom. Hence, the cooperation and assistance possibilities under the Charter and the new approach of the Kingdom on the realisation of children's rights under the Children's Convention should also help towards the effectuation of women's rights domestically.

At country level, factors like governmental and political instability, lack of integrity, corruption, lack of political maturity and commitment, lack of financial resources, the capacity of personnel and institutions, appropriate priorities, cultural resistance and lack of cooperation and of will power from civil servants and politicians, lack of monitoring of the programmes and projects, and a lack of expertise on gender issues among governmental agencies affect the development of women from a human rights perspective.

My appraisal of the status of the national machinery for the effectuation of the gender policy for the realisation of women's rights and the advancement of women upheld the conclusion that there is structural lack of cohesiveness in this policy and that the machinery reveals weaknesses. The shortcomings noted in the submitted State-reports and the interviews which I undertook affirmed this assessment. As no in-depth documentation on the old (Antillean) national machinery and on gender policy was found or made available by the Government and civil servants, the picture remained very blurred. This state of affairs affirms the assessment that a lack of cooperation and of will power from civil servants and politicians and the lack of expertise and capacity among them jeopardise the effective realisation of a human rights approach to development programmes and plans directed at women's and gender issues. Without a change in approach, in attitude and mentality among these actors, the necessary progress for local women will not be realised. So, in my view (inter)regional and international assistance is badly needed to strengthen the national framework.

I was, despite all this, able to ascertain that the old (Antillean) national machinery was divided among the then federal and local governmental agencies, which were the Directorate of Social Development under the Ministry of Public Health and Social Developments since 2002 and its local counterpart in Curaçao the Bureau of Women's Affairs on behalf of the local Executive since 1995. These governmental agencies together with local NGOs developed and executed the alleged national gender policies, which were mostly legal reforms and the implementation of ad hoc programmes. The execution took place based on the experience of the people involved and not on research-based data or from a human rights perspective. The contribution of NGOs, as actors from below, to governmental projects and programmes directed at gender and women's issues was extremely valuable.

The shortage of documentation on the functioning of the governmental agencies and of the local Bureau of Women's Affairs affirmed my view that this local agency in particular was unable to develop a structural and cohesive policy and, more importantly, to execute it effectively. Thus, the conclusion that the work of these organisations missed the necessary recorded and scientific grounds, that thus impeded the transformation of projects into a more dynamic and modern operation is accurate. Moreover, during its final years the local Bureau of Women's Affairs operated on a family- and community-based approach to the advancement of women. Despite all this, the closure of the local Bureau of Women's Affairs in 2010 represented a major weakening of the national machinery, whereas the transformation of the Bureau into an agency responsible for the development of programmes directed towards the attainment of gender equality and the modification of harmful patterns of conduct based on reliable scientific grounding within the Ministry of Social Development, Labour and Welfare could have strengthened the capacity of the national machinery further.

Since the constitutional reforms the sector of 'Family and Youth', within this Ministry is the agency accountable for the development and execution of a national gender policy and the obligations set out in the Women's Convention. Yet, as the general social policy starts out from a community-, youth- and family-based approach, not much attention is explicitly given to measures directed at gender and women's issues and on the incorporation of a gender perspective in the national policy as mandated by international human rights law. With the exception of the issue of domestic (gender-based) violence which is one of the few areas where women's issues have a prominent place, the general development of women is undervalued. Hence, gender mainstreaming of the national policy following

Article 3 Women's Convention is desperately needed as is also the creation of a national plan on gender and women's issues.

Prior to 2010 the available financial resources of the then local and federal Executives, as actors from above, for the development and execution of general social policies and programmes, including gender- and women-sensitive policies, were supplemented with substantial development aid from the Netherlands. These agencies were thus not independently capable of coping with the financial burden for the social sector after the austerity measures (SAPs) imposed in the late 1990s and early 2000s. Moreover, the lack of effective countervailing measures aggravated the situation of weaker social groups, which are in desperate need of support and assistance. The spectrum related to the financing of projects of NGOs by the Executives, AMFO and (in)directly USONA, whether or not under the responsibility of the local Bureau of Women's Affairs, was very complex and blurred and not really gender-oriented. For instance, with the exception of a couple of projects directed at gender-based violence and single mothers, the Social-Economic Initiative did not explicitly include projects on the backwardness of women.

As of 2010 the subsequent coalition agreements, government programmes and the budgets of 2011-2013 showed that, with the exception of the intention to set up a national plan on domestic violence between the Executive and NGOs and the mention of compliance with the reporting obligation under the Women's Convention, not much information was included on the introduction of gender-sensitive policies and (legal) measures by the sector of 'Family and Youth' nor on the strategies and plans on which is based compliance with international obligations. Effectively, the national policy does not take much regard for the further advancement of women. No specific governmental intention towards the development of a cohesive gender policy was included, while disproportionate attention is paid to the development and enactment of youth- and family-based policies and plans. The development of women is mostly seen from a family-based perspective.

Despite many attempts I did not retrieve any additional information on plans and strategies towards the realisation of gender-sensitive programmes based on international human rights standards and norms. This exhibits a severe shortcoming, and as long as the State-government does not alter its approach towards the inclusion of a comprehensive gender-perspective in its policies the backwardness of women and of the collectivity will never change. In my view, the development of society can only be realised when the advancement of local women is approached in a deliberate way, as they are the key players for real progressive transformation in Curaçao.

Thus, the Ministry of Social Affairs, Labour and Welfare should have as one of its objectives the realisation of a comprehensive national gender policy from a universal human rights perspective defined by a contextual approach. This policy must contain instruments and mechanisms tackling discriminatory gender stereotypes in society, as obliged under, inter alia, Article 5 Women's Convention, such as the creation of gender-sensitive school programmes based on an intentional transformative and emancipatory approach and grounded on scientific research and reliable data. However, considering the priorities set by the Executive, imposed austerity measures, political and governmental instabilities, lack of integrity and internal power struggles affecting the necessary progressive developments, an urgent adjustment of the local way of doing politics and governing has to take place for the effectuation of this policy.

Moreover, with the phasing out of Dutch development aid by AMFO in 2013 and USONA at the end of 2014, another major challenge emerges. The possibility of failure of social and governmental programmes is imminent, as the Executive has to secure the improvements which have already been made by allocating the necessary financial means for the continuation of parts of the projects. If it does not reprioritise, the social situation of many inhabitants, including women, will eventually deteriorate further. The fact that the social development of the local people was partly determined by an external benefactor has weakened the approach of subsequent Executives to the social well-being of women, as they did not really form part of the target groups (policy) of the funding organisations. The austerity measures imposed to balance the budgets of 2013 and 2014 through the Committee of financial supervision (CFT) by the Council of Ministers of the Kingdom in 2012 based on the consensus-Kingdom's Act on Financial Supervision, resulted in substantial cuts in the social, educational and health sectors and this went against the then Government's objectives for the realisation of progress. The austerity measures touched on the functioning of NGOs and social groups and this has made matters worse across the whole social spectrum.

Next to the Executive the legislature and the judiciary also have a role to play in the protection and promotion of women's rights. The legislature has an obligation to introduce and enforce legislation in accordance with the Women's Convention, and to scrutinise every draft of legislation on the principles and standards of international women's (human) rights law so as to exclude the introduction of discriminatory law. I therefore make a plea for the rapid introduction of the General Equal Treatment Act and the adoption and adaptation of domestic law in accordance with the Women's Convention, and for a more proactive approach from the legislature as it can employ its budgetary right to demand the realisation of gender mainstreaming.

The judiciary in its turn is obliged to provide additional protection to women by scrutinising domestic law on the Women's Convention. Based on a more progressive approach the judiciary can dictate the applicability of domestic law in accordance with the substantive provisions of the Women's Convention such as Article 16. In regards to Article 5 Women's Convention, it can easily be argued by these legal experts and others that the provision only contains a State-obligation to undertake positive actions. And as is well known, the effectuation of a positive State-obligation is inextricably linked with the availability of (financial) resources, which in general are very scarce, and with political will. However, the direct enforceability provided to Article 5 Women's Convention through the case-law of the Committee suggests the contrary and this position opens up alternatives for its application at a domestic level. As Article 16 Women's Convention contains the State obligation to take 'all appropriate measures' to eradicate discrimination against women in family matters, I argue that under its formulation also lies the acceptance of the direct applicability of the provisions of the Women's Convention in the domestic legal system by the judiciary.

Considering that the House of Representatives of (the Kingdom of) the Netherlands has determined that the (substantive) provisions of the Women's Convention may have direct applicability in the legal systems of the countries within the Kingdom, which is determined by the judiciary, and furthermore the ratification of the Optional Protocol by the Kingdom in 2002 has accentuated the direct enforceability of the Convention, there are no real impediments to the reviewing of domestic law on the (substantive) provisions of the

Women's Convention. The direct applicability of the Convention can be constructed and justified through the dynamic nature of the Convention. This became more feasible after the *SGP* cases. The judiciary and legal practitioners have to be aware of their determinant role in the application of and knowledge about the Women's Convention. With the incorporation of the provisions of the Women's Convention into applied domestic open legal norms and concepts, another possibility for the strengthening of the protection can be created by the judiciary.

The intended creation of a National Institute of Human Rights, composed of independent and pluralistic representatives, would eventually strengthen the protection and promotion of women's (human) rights in Curaçao. Hence, a plea in favour of the rapid effectuation of the plans is given voice here. The Ombudsperson can provide, in the meantime, some protection as it addresses the misconduct of the Executive related to violation of human rights by reviewing and publicising its findings on these issues. It still does not have a full and specific authority to act on all human rights infringements though, particularly those in the private domain. Another challenge relates to its lack of capacity, personnel and expertise, particularly on human rights law, to cope effectively with the many complaints against the Executive.

§ 12.5 **The contribution of the NGO sector and the financing of their projects: the Participation aspect**

My examination of the contribution of NGOs established that most NGOs have been operating from a development-based approach. With the restructuring of the fragmented sector of the NGOs in the late 1990s and the establishment of the NGO Platform afterwards, many people had hoped for the creation of a permanent consultation and cooperation mechanism between the NGO sector and the then local Executive. The latter supposedly obtained a stable dialogue partner on welfare and social policies, including on gender issues, in the NGO Platform. With the inexplicable discontinuation of its operations in 2009, the sector currently lacks the capacity to address the challenges which society is facing, particularly in regard to the effectuation of women's rights and the overall development of women. So, the imperative structural participation of the NGO sector in the decision-making process reveals weak links and shortcomings here.

Although the community can count on the contribution of development NGOs, such as the Women's Development Centre (SEDA), the '*Stichting Maatschappelijk Zorg en Herstel*', and the Association for Responsible Planned Parenthood, a more critical and assertive approach towards governmental actions is absent, as they are funded by and dependent upon the Executive. The fact that NGOs do not operate from a human rights framework and are not familiar with the human rights discourse affects their output, sustainability and the emancipation effects of their programmes. This undermines their performance as real vernacularisers or translators of international human rights standards and norms into domestic instruments. Moreover, their structural lack of financial means, personnel, resources, expertise and infrastructure weakens their operations towards the effectuation of women's rights from a holistic point of view.

Despite the fact that financial means were made available in 2011-2013 to a selection of NGOs to carry out part of the governmental policy, these means were not sufficient. The

sustainability in their funding by the Executive is endangered because of the shortage of financial means, because of austerity measures and because of the priorities in the allocation of disposable means. The closure of AMFO accentuated the seriousness of the situation. The absence of monitoring mechanisms for the evaluation of the effectiveness of the financing and execution of the projects and programmes of NGOs and the ensuing changes benefiting the advancement of women, damages the whole sector. Nonetheless, many NGOs form a safety net for women, despite the financial constraints they confront.

In my perception, local NGOs, as actors from below, should rethink and re-evaluate their approach, as they have a prominent role to play in the translation and fulfilment of women's rights. They have to demand and take ownership of their place as rightful participants in decision-making processes. Without their contribution and support local women, as rights holders, will be deprived of the enjoyment and protection of their rights and of having a dignified life free from oppression, inequality and discrimination based on harmful gender-stereotypes.

§ 12.6 Equality and non-discrimination norms from a human rights-based approach: the Non-discrimination aspect

The legal concept of equality and non-discrimination as the driver of transformation is a coin with two sides, entailing the right of individuals to equal treatment and differentiation based on the circumstances involved and the prohibition of discrimination. Claims of equality made by individuals are not unlimited, as responsibilities and margins of appreciation of the branches of Government have to be taken into account.

At country level, the norms ensured in Article 3 Constitution Curaçao, stemming from Article 1 Constitution of the Netherlands, represent modernisation. The non-discrimination norm in this provision has a non-exhaustive system of grounds of differentiation, which amplifies its protection. Moreover, the recognition of indirect discrimination through case-law has improved the protection that can be provided to claimants. Although the enactment of (temporary) preferential treatment to redress discrimination and to accomplish substantive equality during a defined period is allowed from an inclusive perspective, this is not, however, mandatory stipulated in the (Article 3) Constitution of Curaçao. Through case law the introduction of this type of measure is permitted domestically. The general comments of treaty-based bodies also make it feasible, and in the case of women's rights it is even set out in Article 4 Women's Convention.

Unlike the Netherlands, Curaçao does not have a general Act on equal treatment which could have strengthened the protection of women, and activated a more progressive and transformative approach on equality. It is regrettable that, although the enactment and implementation of such an Act has been mentioned in official documents since 2006, this information provided to treaty-based bodies has proved to be incorrect. In my search I discovered that there was not even a draft of the law. The multiple forms of discrimination and ill-treatment that local women and other vulnerable groups experience, demands the introduction of such an Act as soon as possible. The enacted Article 1613 aa Civil Code of 2012 prohibiting unjustified sex-based distinction in the private labour sector does not provide the required protection. In my opinion the legislature of Curaçao could simply follow the framework developed in the Netherlands and the Dutch General Act on equal treatment

and its case-law and adapt it to its own societal reality and needs. With the furthering of the cooperation, assistance and concordance in legislation at Kingdom's level through the enactment of the Mutual Agreement on the Official Legislative Consultation on Kingdom's Affairs in 2013, such an action is justified.

Thankfully, many gender-neutral equality norms in human rights treaties complement the meagre domestic equality framework, and thus further the protection offered. The international framework makes a distinction, however, between dependent and independent equality norms. As shown, the protection that Article 26 ICCPR, Article 14 ECHR and Article 1 Protocol No. 12 have provided in the former Netherlands Antilles, i.e. Curaçao, has been of unquestionable value. Most cases implying unequal treatment are reviewed against these instruments. The *Shaw v Sint Eustatius* cases on the eradication of discrimination based on sex and marital status, and the *Mathilda c.s. v Roman Catholic Central School Board (RKCS) & EG Curaçao* case on wrongful justification based on the liability of support and the providers' role are proof of this.

In the domestic legal system, however, discrimination is scrutinised on the one ground approach. The judiciary is responsible for coherent standards for the scrutiny. The multiple forms of discrimination which local women suffer require further protection urgently. So, the (legal) recognition of intersectional and multiple forms of discrimination and the dropping of the single ground approach when reviewing inequality claims is imperative. Hence, through the introduction of the prohibition of multiple and intersectional discrimination and/or a progressive and transformative reviewing approach by the judiciary at country level, severe forms of discrimination can be remedied. Therefore, with the enactment and application of legal norms on multiple forms of discrimination by the legislature and the judiciary, as mandated in the soft law of the treaty-based bodies, international case-law and from the human rights discourse, relief may be attained from the multiple forms of discrimination from which local women suffer.

§ 12.7 The empowerment of women worldwide and its effects domestically: the Participation and Empowerment aspects

In regards to the empowerment of women, I reviewed the emancipation and liberation of women internationally. This was subsequently put into a domestic perspective. It became clear to me through this exercise that, since the Enlightenment period, the struggle of women has been against their exclusion from the public and labour sectors, against their marital subordination and for the realisation of their empowerment through the attainment of education. Liberal and socialist feminism gave their views on the oppression and the liberation of women, each employing their own approach. Radical feminism, as the third mainstream, rejected the dominating political theories altogether as being patriarchal instruments. Although these theories formed the foundation for the further development of the international women's movement, it was the recognition of women's rights as human rights in the Charter of the United Nations of 1945 that contributed to the development of women's rights internationally.

Through the establishment of the Commission on the Status of Women in 1946, the promotion of women's rights by the women's movement and the adoption of several declarations and conventions, the recognition of women's human rights became a reality.

International Women's Year of 1975 and the various World Conferences on Women afterwards are proof of these positive developments. Other mainstreams, such as psychoanalytic feminism and black feminism emerged afterwards. Interestingly, the latter being a result of the awareness process of Afro-American women in North America (US) in the 1960s, was very critical of the universal claim of the other mainstreams which departed from the perspective of white women in Western societies and which did not take the hardship and challenges of black women into proper consideration. In the view of black feminists the differential treatment of women was not only gender-based, but was also related to internal distinctions among women, their class, race, ethnicity and sexual preferences. Accordingly, a differential approach was suggested by this mainstream as women do not form a homogenous group; an approach that is certainly suitable for the Curaçaoan context and for the enforceability of the Convention at the domestic level.

The positioning of feminism on the universal claim and cultural diversity on human rights is very revealing. It is evident that, although feminism is very critical towards the way the universal claim is often applied in practice as, in its perception, the practice only considers the rights of white, heterosexual, Christian men, feminism also does not support the cultural claims as, based on these claims, women suffered horrendous oppression and abuses. Feminism favours a universalistic approach and the inclusion of women's rights in the human rights system. A reconciliation between the two approaches is advocated by feminism and this is underlined by the Committee. Black (postcolonial, i.e. transnational) feminism argues for a contextual approach and invokes the transformation of norms and principles based on universality and the creation of new gender-sensitive norms.

Accordingly, the importance of the contribution of feminism, particularly black feminism and (transnational) postcolonial, i.e. Caribbean, feminism, employing universality from a contextual approach for the development of local women, has to be identified and made known more widely at the country level. The Curaçaoan society suffers too much from a double standard of behaviour in gender relationships, and in racial- and class-based distinctions, which has been severely affecting the development of black women. Ignorance of the history of women, misconceptions about feminism, and harmful perceptions on gender, all negatively affected the advancement of local women. Awareness-raising programmes and studies on women and feminism and its political contribution, including the contextual approach of black feminism, have to take place. Higher education institutes should assume a prominent role in this process.

It must be handed on to the younger generations that the island, together with its women, has experienced its own awareness-raising processes and social movement. This process among local women occurred (un)consciously in the 1940s, when they were living under colonial rule and in an extremely patriarchal society. The struggle for the attainment of voting rights and the quest for autonomy of the colony based on the right of self-determination stimulated some women to become active participants. Thus, although not consciously related to the developments of the first wave of feminism, this awareness-raising process represented a struggle against gender-based subordination and oppression that correlates with the essence of the women's movement.

International developments related to the second wave of feminism were more consciously followed and applied by local women. The awareness of and need for further advancement and for equal rights, specifically after 30 May 1969, induced a dynamic

development on local level. The evaluation of the equality aspect of domestic law by the national Commission of 1971 showed the first signs of the elimination of gender-based discriminatory legal norms. This type of process has to be encouraged today, otherwise the further advancement of Curaçaoan women and society will be delayed.

Another positive development was the institution of the Federal Bureau of Social Affairs in 1974, revealing the first steps towards the creation of a national machinery dealing with women's issues at the federal level. The role of the Steering Committee Curaçao, at that time as an officially recognised dialogue partner for local and federal branches of Government, stimulated the involvement of women's organisations in the decision-making process. Thus, the strong position of women's organisations is something that must be reinstated. Also, more revolutionary organisations, like the Union of Antillean Women (UMA), and a conscious approach among legal practitioners are of great importance in the struggle for the further advancement of women and the realisation of their rights. The elimination of the legal incapacity of married women in 1975 and of discriminatory provisions in the National Ordinance on legal and material rights and obligations of civil servants (L.M.A.) 1964 in 1983 are examples of the transformative developments and pressures that can be induced by the active participation of responsible women in public and private sectors.

However, it cannot be claimed that with these accomplishments and the elimination of certain inequalities in the private and public (labour) sector, the need for the further advancement of local women diminished. The 'liberty' which local women currently enjoy is of recent days and it is fragile. It is something that has to be cherished. In my perception the reinvention and reactivation of local women's activism and critical voices for the creation of a space benefiting all women and gender-equality has to take place. The drawback from, and weakening of a rather progressive approach for the further emancipation and advancement of local women should be addressed. The lack of solidarity and support among women, the opportunistic behaviour of some (successful) women, the lack of consciousness among women, which have all contributed to this drawback, must undergo a critical scrutiny and a transformative process.

It must be understood by all actors involved that the (forceful) participation of women in the labour sector, which led to the overburdening of women, was the result of the non-transformation of societal male-oriented constructs, and not of the emancipation of women. The uprising of a conservative mainstream proclaiming family values based on unjust patterns of conduct, instead of a new inclusive approach on the participation of women in the formal labour and educational sectors, must therefore undergo a critical re-examination. Moreover, international developments which were no longer explicitly followed locally, resulting in the diminishing of the overall consciousness among local women, must be given new momentum.

The initial dynamic and progressive participation of governmental agencies, NGOs and individual women at various regional and international conferences on women's issues remains impressive. However, the implementation of austerity measures in the late 1990s, led to cutbacks in the governmental apparatus, in the support for NGOs and the social sector and caused a slowing down of this process.

Considering that not many far-reaching academic investigations were undertaken on gender-issues and the development of women in the former Netherlands Antilles, i.e. Curaçao, from a human rights-based approach, I cannot provide a more accurate

picture of the progress attained. Only a handful of people who were closely involved in these developments were still able and willing to recollect some of the occurrences, while others have (un)consciously forgotten their relevancy for society. This underlines the ignorance about the history of local women and their contribution to this society. Relevant governmental documentation and information to verify and put things into perspective could not be retrieved, as they had inexplicably disappeared or had been destroyed, a situation which affects adversely the completeness of any investigation into women's and gender issues locally.

My take on all this is that it affirms the lack of emphasis on and interest in women as rights holders. This belief is confirmed by the lack of incorporation of a gender perspective in the national policy of the Executive. It is even questionable whether at the moment one can speak of a politically conscious movement based on an equality principle from a women's perspective, where the differential treatment which women need from a contextual perspective is taken into consideration, as proclaimed by (black) feminism and the human rights discourse. The only issue that receives any attention is gender-based violence, because of its societal impact. The way (non)governmental agencies approach this issue, however, does not entirely depart from an universalistic human rights-based approach. Many development NGOs operate on an issue-oriented basis, which slows down the real empowerment of local women. Examples of this were the struggles for the legal capacity of married women in the 1970s, against the unequal treatment of women in the public labour sector in the 1980s, on the issue of teenage pregnancies in the 1990s and on the current issue of gender-based violence. This one-issue approach leads to a weakening of awareness, of the movement and of the achievement of real advancement for Curaçaoan women, as indicated by feminism and by the Committee.

The signing of the Women's Convention without any restriction by the Kingdom in 1980 represented an opportunity for local women to take ownership of their development and for the strengthening of the domestic protection system. The persisting unjust gender-stereotypes and patterns of conduct which impede the proper implementation of the obligations by duty bearers and the claims of rights holders under the Convention could now be addressed. The adoption of the Optional Protocol in 1999 has also strengthened the protection mechanisms internationally. Yet, for their meaningful contribution at the local level, they have to be disseminated amongst women, governmental agencies, civil society and legal practitioners properly.

The guidelines adopted by the numerous World Conferences and Forums on Women, in particularly the Beijing Platform for Action of 1995, did strengthen the advancement of women and the further recognition of women's rights at the international level. With the twelve critical areas of concern and a well-elaborated Beijing Platform for Action, and its subsequent periodic reviews, a framework was handed to the national Governments where, *inter alia*, gender mainstreaming at a domestic level had to be accomplished. In my view compliance with the Platform for Action can be achieved through the adaptation and modernisation of the former local and federal plans and projects by governmental agencies and NGOs. By putting these plans into force in accordance with the most recent goals and objectives stemming from the periodic reviews and the guidelines handed out by the Committee, the creation of a detailed national plan, including women's rights on education and awareness that empowers all women, can be effectuated.

§ 12.8 The importance of women's rights law at domestic level: the Linkage with human rights and Accountability aspects

For the creation of the connection with international women's (human) rights law at country level several elements have to be in place, such as the stimulation of views and values on women's (human) rights law, the creation of domestic mechanisms for the realisation of women's (human) rights and the establishment of cooperation with (inter)national mechanisms on women's and gender issues.

It is now generally recognised that gender-neutral (inter)national equality and non-discrimination norms which were male-oriented in nature, were not dynamic or progressive enough to deal with the ill-treatment of women. I am therefore convinced that the values and visions of the Women's Convention from a gender-sensitive perspective represent an effective protection for local women, as the Convention abandons the general equality norms that depart from the assimilation of the position of (white) men by women. It is only with the eradication of harmful gender-based patterns of conduct and gender-based discriminatory law at domestic level that true equality can be accomplished; thus a transformative process has to take place in Curaçao.

Every aspect that influences the full societal development of Curaçaoan women is identified in the Women's Convention. Article 1 Women's Convention defines discrimination from a gender and women's perspective. It prohibits indirect and direct gender-based discrimination. Moreover, it forms together with Articles 2, 3, 24 and 5 Women's Convention the framework for the effectuation of the substantive provisions in the Convention on local level. The broadening of the scope of Article 1 through General Recommendation no. 19, with the eradication of gender-based violence, suggests that under its non-exhaustive system of grounds, protection against any ground of sex- and gender-based discrimination can be created. This view was confirmed and adopted by the European Court on Human Rights which took the definition of the Committee in its *Opuz v Turkey* case. It considered gender-based violence to be discrimination under Article 14 ECHR and Article 1 Women's Convention. Thus, this case illustrates that the domestic court can adapt and apply its views and decisions in accordance with international norms and standards, when reviewing domestic claims.

Article 2 Women's Convention establishes the State obligation to introduce legal and policy measures to eliminate gender-based discrimination. In conjunction with Article 5 Women's Convention it addresses the issue of harmful gender-stereotypes, revealing the uniqueness and progressiveness of the Women's Convention. The creation of the possibility of introducing temporary special measures by Curaçao under Article 4 Women's Convention, without this being labelled as a violation of the general equality norms, makes it easier for the domestic legislatures and the Executive to introduce temporary special measures directed at the advancement of local women. In the realisation of gender equality when using Article 5 Women's Convention, these duty bearers have to be aware that gender-based discrimination is maintained and strengthened by male-oriented legal, social and religious constructs that depart from different two-fold categories. Local women operate (un)consciously within these distinctions and they are negatively affected by gender stereotypes and fixed parental roles.

Article 5 Women's Convention ensures the State-obligation to create a local framework to introduce transformative (legal) measures on discriminatory patterns of conduct for the

advancement of local women. This goes beyond proper education and awareness raising programmes among governmental actors and legal experts. The mass and social media is instrumental in the empowerment of the public, as long as it does not contribute to the further objectification of women. This implies that, together with legal practitioners, the media also has to undergo (again) an educative transformation on the field of gender. This is an ongoing process that has to continue as a priority within governmental policy.

The standards and values stemming from Article 5 Women's Convention and the soft law of the Committee secure the provision's function as a guideline for the implementation of the obligations under the Convention. The direct enforceability given to it in the Committee's case-law opens up many possibilities. The Government of Curaçao has to adopt legislation and policies in accordance with the standards and norms in the Convention, where explicit attention is paid to the elimination of harmful gender-stereotypes and fixed parental roles. The three-tiered model suggested by Biholar for effectuation of Article 5 Women's Convention at country level could be helpful in this process.

Although the direct applicability of Article 5 Women's Convention might not be accepted by the local judiciary and legal experts, the provision upholds obligations for the Government to take positive actions to eradicate discriminatory gender stereotypes within society. Accordingly, seeing the dynamic nature of the Women's Convention, I argue, following Holtmaat, that a claim on the violation of the provision caused by gender-stereotypical policy and by (legal) measures leading to damage to the rights of an identifiable group of women, can be sustained. Hence, for the realisation of claims on Article 5 Women's Convention in the context of Curaçao the following has to be taken into consideration.

First of all, two-fold categories of black and white, superior and inferior, African and Western, men and women, private and public are disadvantageous to local women. The fluidity of culture brings with it the opportunity for the transformation of harmful patterns of conduct embedded in these categories, particularly those in gender-relations. The alteration of socio-cultural patterns has to be approached on a conscious level by the State-Government in its educational and awareness programmes. One should not disregard the maintenance and influence of a mainly religiously oriented educational system where the religiously based stereotypical approaches on gender roles and gender relations are kept in place and passed on from generation to generation. As the feminisation of the Catholic Church did not bring any change in this approach, the position of religion on gender must be included in the discussion. The influence of other social institutions like language, media and the law should not be disregarded either.

So, the many efforts of the then local Governments to create and cultivate a local culture through activities like the recognition of '*Papiamentu*' as an official language, one of the few cultural binding factors within the society, should be applauded and continued in a conscious way where the principles and standards of international human rights law and the gender perspective form the points of departure. Yet, the approach on language as a differential factor which co-determines perceptions on the educational level, intelligence and social status of people has to be abandoned. The policy on the pursuing of further study abroad, which subsequently results in a brain drain and its negative effects on the further development of the island and of women has to be re-examined. Through the creation of and investment in the possibilities and quality of higher education and the cultivation of a sense of confidence, pride, gender equality and human dignity from a human rights

perspective, this can be accomplished. The superior and exclusive attitude of a group of (young) professionals who return to the island after their studies abroad, with a Western, i.e. Dutch, mentality and lifestyle, resulting in a confrontation of cultures and maintenance of the backwardness affirms my position on this matter. Often, their willingness to share and transfer knowledge to those less fortunate is not present.

Lower social class women lacking the required language, labour and educational skills who end up in the lower sectors of society, should receive a second opportunity through the creation of temporary special measures as prescribed under Article 4 the Women's Convention and General Recommendations no. 25 and no. 27. The lack of social opportunities and the deterioration of economic and educational opportunities limit their participation in all social areas disproportionately. As a result of this they end up in the welfare system and in underpaid occupations, which strengthens the feminisation of poverty, and the exploitation of their labour and sexuality. All this constricts the further development of society.

Ironically, it is perceived that, as Curaçao has experienced several dynamic, successful and well-educated female (Prime) Ministers and businesswomen, and due to women's (forceful) en mass participation in the labour sector, women overall have a good position in the labour sector and in society. This is far from true. As of 2014 many women lag behind in their development as they are victims of disparity in wages, male-dominated rule and harmful organisational culture, gender-based occupational segregation, gender-based under-valuing of occupations, unequal power-relations, double standards in sexual morality and '*machismo*'. The educational out-performance of the male by the female did not translate itself into real improvements in women's overall socio-economic situation.

Regardless of the centrality of women in the private domain, patriarchal elements are still dominant and they co-determine the way women perceive themselves and are perceived by men. The migratory, irresponsible and unfaithful behaviour of the male towards his family relationships, the disparities in the education of the male and the female, the multiple roles and responsibilities of women, particularly in female-headed households, and the lack of communication between the genders aggravates the situation. The lack of (financial and emotional) support for women from their spouses, of childcare and after-school activities for their children from the Government and the breaking down of the informal family support system have worsened this situation. So, awareness about equal parental responsibilities as described in Article 16 paragraph d Women's Convention has to be addressed and this starts in the educational system and through governmental programmes.

And although the education of children in Curaçao is itself very conservative due to its religious base and social mechanisms, modern developments connected to migration to the Netherlands, further (technological) modernisation, materialism, (extreme) liberal morality and individualism have all led to alteration of the values and standards in education and in social cohesion. As a matter of fact, the educational system and the social environment still produce class-based, gender-based and racial-based asymmetrical results for males and females that keep the power- and gender-relations in place. Moreover, in my view, the approach to the problems faced by boys in the educational system and male marginalisation is exaggerated. It represents a backlash against the further advancement of women as, because of it, insufficient attention is being placed on the marginalisation, objectification, oppression and the backwardness of women, and on the exploitation of female sexuality in this male-dominated society. Thus, governmental policy and strategies should be directed towards a

transformative approach where equal opportunities are created for every individual, and where harmful gender-stereotypes and fixed parental roles are addressed in conformity with the 'soft law' of the Committee.

The rightful introduction of the Compulsory Youth Training Programme in 2006 symbolised an alternative method, providing a second opportunity for many prospectless youngsters up to 24 years of age, in spite of the fact that the gender-aspect was not thoroughly or consciously taken into consideration in the execution of the programme. The majority of the participants turned out to be female. The unreachable hard core male drop-outs, who often end up in the criminal sphere, the low success rate, the lack of connection with the labour and the regular educational sectors, reflected the lack of effectiveness of the programme. All these factors call for the rethinking of this programme, particularly after the ending of its co-funding by the Netherlands. Additionally, general, structural and government subsidised adult vocational programmes for the improvement of women older than 25 years of age should be enacted, particularly for women, heads of families living in poverty, deprivation and backwardness, as mandated by the Convention and the subsequent General Recommendations.

As the connection to human rights and accountability of State-agencies are also expressed through the scrutiny of domestic law on international human rights law, I conducted a review of several legal measures enshrined in the national family law on the norms and standards stemming from Article 16 Women's Convention as an illustration of and a plea for the (proper) use of the legal tools and guidelines provided by the Women's Convention and the Committee at country level. The application of State obligations under Article 16 Women's Convention defined in General Recommendations no. 21 and no. 29 provides extensive opportunities for the introduction of national (legal) measures in family law in accordance with international human rights standards and norms.

My examination showed that, despite the reform of the old family law of the former Netherlands Antilles in 2001, the law remained at the conservative end of the liberal family law of the Netherlands of 1970. These reforms were the result of the obligations set out in the concordance principle, pursuant to Article 39 Charter and case-law based on international human rights law, rather than a result of the obligations set out in the Women's Convention. Further amendments were enacted in 2010 and 2012.

It is now established that some domestic provisions did comply with the obligations enshrined in Article 16 Women's Convention, whereas others did not completely. The law of marriage, for instance, only recognises the freedom of people of different sexes to enter marriage under Article 1:30 Civil Code, implying the non-recognition of and lesser protection for other cohabitation forms, contrary to what is prescribed in General Recommendation no. 21. The legislature was not courageous enough to take a stand on the matter. Although de facto unions have not been incorporated in the Civil Code, a few provisions providing protection for people, particularly women, living in these unions have been introduced to date, such as Article 1:87a Civil Code, Article 1:408b Civil Code, Article 4:30b Civil Code, Article 6:108 Civil Code and Article 7:236 Civil Code.

The law of divorce recognises the permanent breakdown of marriage as the only common ground for divorce, pursuant to Article 1:151 Civil Code, nullifying the use of the blame construction and of divorce tourism. Nevertheless, with the limitations set out in Article 1:151 paragraph 2 Civil Code it does not entirely qualify as being in accordance

with Article 16 paragraph c Women's Convention. The best interests of underage children prevailing over the equal rights of the mother, when filing for divorce, can ultimately lead to undesirable (financial and social) and limiting consequences for women. Another anomaly concerns Article 1:152 Civil Code, which protects the interests of men against the alimony claims of 'malicious' (foreign) women. The legislature departed from a male-oriented approach and gender-stereotypes here and it did not fully consider the protection of women. The provision contains a breach of the obligations set out in Article 16 and Article 5 Women's Convention. This is also visible in the norm under Article 5i paragraph 2 Civil Code, where the primacy of the male prevails.

The law of parentage corrects some discriminatory aspects of the relationship between parents and their children following the '*Marckx v Belgium*' case of 1979. Recognition of a child under Articles 1:203 to 1:205 Civil Code, is an improvement for the rights of children born out of wedlock to married men. Hereby, equal responsibilities of men towards their children and the mothers are regulated in accordance with Article 16 paragraph d Women's Convention and General Recommendation no. 21. Nevertheless, these provisions do not lead to the diminishing of undesirable patterns of conduct related to the procreation of children and the dissolute sexual behaviour and (lack of) parental responsibilities towards children. In this sense Article 5 Women's Convention provides more adequate instructions for governmental agencies for policies and actions addressing this societal plague. The intended introduction of additional new rulings on the identification of the putative begetter by the mother in the extra-judicial measure '*reconocimiento provocado*' can provide some solution to and transformation of these undesirable patterns of conduct.

Judicial establishment of paternity, after making an inroad through case-law, is regulated in Article 1:207 Civil Code as a relief to the disproportionately heavy load which single mothers carry in the education of their children. They can share the financial burden with the fathers by requesting alimony under Article 1:208 Civil Code. In the case of an alleged father who is deceased, however, Article 1:207a Civil Code undermines and limits the rights of the unrecognised child to its inheritance and the right of its mother to (financial) support. These provisions regulate the protection of the rights of the widow following General Recommendation no. 29 and the children born in wedlock. This can be seen as an unjustified and disproportionate indirect differentiation amongst the children, certainly when it concerns an underage child. However, Article 4:35 Civil Code secures the child's rights through an immediate sum as inheritance for its education and support.

Regardless of the many legal measures regulating the financial support obligations which fathers have towards their children, the effective support which mothers receive for the children is very meagre. An exception is provided by Article 1:408a Civil Code, which gives a temporary financial support to the mother after childbirth. Also, parental rights and *ipso jure* joint parental authority after divorce and after a break-up of a relationship are based on the equal rights and responsibilities of parents in the education of their children. In cases of conflict, the legislature has created dispute-settlement mechanisms, under Article 1:251a Civil Code.

With this review, I can convincingly put forward now that not only the introduction of legal measures is necessary to address the formation of responsible parenthood in society, but also effective policy from a human rights-based perspective is required. Thus, the national Government has an obligation to enact effective and transformative policies and

(legal) measures in accordance with the standards in the Women's Convention, particularly those stated in Article 5.

Accordingly, for the achievement of true gender equality in Curaçaoan family law, the entire law has to undergo a gender- and emancipation-sensitive scrutiny, considering the State obligations set out in the Convention and the presence of discriminatory provisions. The enactment of gender-based discriminatory provisions, such as Article 1:152 Civil Code, is just not acceptable. Actions towards their adaptation in accordance with the standards and norms enshrined in the Women's Convention have to be undertaken. The progressive usage of the Women's Convention and the 'soft law' of the Committee, through the creation of a statutory mechanism whereby the legislature has to undertake a women's human rights proofing of any legislation prior to its enactment, could give some support here.

In short, I am of the opinion that the 'soft law' of the Committee together with the Convention should be utilised in the introduction and scrutiny of (legal) measures and policies to ensure the real advancement of Curaçaoan women. An example was set with the *Fundashon Kresh Montagne* case of 2012 where concluding observations of the treaty-body to the Children's Convention were considered by the judiciary. Thus, there are no impediments for the incorporation of the 'soft-law' of the Committee to the Women's Conventions in cases concerning violation of the rights of local women. Simply complying with the submission of periodic reports by the Government, as stipulated in Article 18 Women's Convention, is not sufficient.

Subsequently, my analyses of the five submitted periodical reports of the former Netherlands Antilles also gave insights on the status of the realisation of women's rights and the implementation of the Women's Convention at the domestic level. In comparison with many other small Caribbean States, the former Netherlands Antilles had complied for the most part with its reporting obligation in time. This was one of the advantages it had from being a part of the Kingdom. The reports did not always meet the requirements, though, as they lacked in-depth analyses, disaggregated data directed at the gender aspect and result-oriented descriptions of the legal and policy measures. A disadvantage of being a part of the Kingdom was that few specific indications or recommendations were incorporated on the performance of the Antillean Government in most of the concluding observations of the Committee on the Kingdom's reports, in comparison with the concluding comments on reports of, inter alia, Barbados. Nonetheless, helpful indications were handed down by the Committee that are useful for Curaçao in its quest for the realisation of women's rights.

The observations of the Committee, such as the one on the non-realisation of gender equality in the Caribbean countries, were definitely not misplaced. Also, the issue of the direct applicability of the Women's Convention in the Kingdom's legal systems remains a point of concern, as the Dutch position affects the protection that is offered to women at the local level. Women's (human) rights education and a greater awareness among legal practitioners were rightly underlined as a measure to strengthen the advancement of women. The position of the Committee that the Government of the Kingdom is ultimately responsible for the realisation of (women's) human rights in the Kingdom, following the Charter, reaffirms my thesis that an adequate, coherent and consistent application of the Women's Convention in all the countries at all levels can only be accomplished when all governmental agencies take their responsibilities seriously, including the Kingdom's Government. In sum, all these remarks underlined the plea for action in accordance with the visions and values of women's

rights and for the creation of cooperation with international mechanisms on gender and women's issues by the local governmental agencies. The request to the former Netherlands Antilles to improve its national machinery for the advancement of women on the occasion of its constitutional reforms, illustrated the doubts of the Committee about the effectiveness of the machinery. This justifies and supports my plea for further cooperation and assistance within the Kingdom and for the establishment of collaboration with international agencies. As of April 2014 the first report of Curaçao had not been submitted. I would have been able to assess from that report had it been published the position of the State-Government on the status of the realisation of its obligations under the Convention, its machinery and the degree of the necessity for assistance and cooperation.

The intention of the then Antillean Government to support NGOs with funds for the compilation of shadow reports was rightly applauded by the Committee. The NGOs are thus still entitled to approach the national Executive for this assistance. Until 2010 only one shadow report had been submitted on women in Curaçao and that was by CAFRA in 2001; a report which gave an accurate assessment of the reality of the situation of local women. Many of the issues, which at that time needed the urgent attention of the Antillean Government, are still present. It is very regrettable that as of 2014 no other shadow report has been submitted by local NGOs, based on which the Committee would have been able to get a proper picture of the conditions under which local women live and of their dire need for further protection and advancement. This shortcoming in reporting by NGOs is related to the fragmentation that characterises the NGO sector and their lack of financial means, infrastructure and more importantly, expertise on gender and human rights issues, as they operate from a development-based approach.

The two other monitoring instruments granted to the Committee under the Optional Protocol have strengthened its mechanisms, and they are also of importance for the protection of Curaçaoan women. The case-law of the Committee based on the communication procedure under Article 3 Optional Protocol has shown that State-parties tend to use the (in)admissibility conditions stipulated in Article 4 Optional Protocol to avoid an examination of the merits of the cases submitted to the Committee.

The operation of the communication procedure is now clear for State-members though and it has gained relevancy through the case-law of the Committee. It became evident to me that the Committee adopts a rather progressive approach when reviewing domestic violence cases, as illustrated through, inter alia, the *Sahid Goekce v Austria*, *Fatima Yildirim v Austria* and *S.V.P. v Bulgaria* cases. With the acceptance of complaints entered by NGOs on behalf of deceased victims of domestic violence, although this possibility was not explicitly created in the Optional Protocol, and the granting of direct enforceability to particularly Article 5 Women's Convention, this progressive approach has become more marked. The case-law gives directions on possible (legal) solutions for the (lack of) protection that is provided to Curaçaoan women, particularly in the case of gender-based violence which is committed as a result of harmful gender stereotypes, and which has grown to undesirable proportions.

The severe cases of abuse registered suggest a serious situation that has to be dealt with by local government agencies. As duty bearers these agencies have thus far failed to provide effective protection and support mechanisms or implement temporary special measures in accordance with Article 4 Women's Convention effectively. It should be applauded and encouraged that alleged victims can receive protection from this ill-treatment through

using the findings of the Committee in court cases against the State, prior to a submission of a communication to the Committee. The claims of victims at a domestic level would be strengthened further when the Government of the (Kingdom of the) Netherlands has explicitly recognised the direct applicability of the Convention and/or the judiciary embraces the reviewing of domestic law on the Women's Convention or at least makes its judgments in accordance with the views of the Committee.

The inquiry procedure as the last monitoring instrument has led to only one inquiry thus far. The investigation in Ciudad Juarez, Mexico has shown that the abuse which women experienced there was linked with harmful socio-cultural perceptions and gender stereotypes. The performance of such an investigation may reveal the vulnerability of a State-member, yet it contributes to the recognition of serious situations on the violation of women's rights and obliged the State concerned to address severe (social and cultural) problems. An argument in favour of an investigation on possible gross and systematic violations of women's rights in Curaçao cannot be sustained, despite the backlog registered in the process of real advancement of local women. The severe cases of gender-based violence do not constitute '*gross and systematic violation*' yet, but they are a plague that could develop into such a violation if the appropriate measures as suggested by the Committee are not taken soon by the Government. If the situation worsens, however, due to the failure of duty bearers to act, I cannot disregard the necessity of a future inquiry. The local situation on the adverse position of women maintained by gender stereotypes, particularly in regard to the cases of gender-based violence, is a cause for concern. It certainly justifies the development and execution of effective policy on the strengthening of the rights of women, such as the setting-up of a national commission on domestic (gender-based) violence, a national plan on gender and women's issues and the establishment of cooperation with Kingdom's, regional and international agencies active in this field.

In sum, with this study I attempted to understand the circumstances under which Curaçaoan women live and put them into a human rights-based perspective. As an identifiable heterogeneous social group, they are in desperate need of support and protection. This is the reason why I am strongly convinced that the effectuation of the Women's Convention in the designated framework can assist their further development at country level.

§ 12.9 Recommendations

Several of the following recommendations have already been voiced in the concluding observations of the Committee on the periodic reports of the former Netherlands Antilles. Thus, I consider that the Governments of Curaçao and the Kingdom, as the duty bearers, ought to take very seriously their responsibilities towards the fulfilment of the obligations set out in the Women's Convention. The international standards, norms and values concerning women's human rights have to be taken into account in every aspect of the domestic policies and legal measures directed towards the further development of local women and girls. If the governmental actors do not comply with this, Curaçao and also the Kingdom will be failing to fulfil their duties towards more than 50 per cent of the inhabitants of Curaçao and towards the international community, with the chance that other States will not take them seriously. Therefore, I present these recommendations for the accomplishment of the real advancement and protection of women at the domestic level. They are divided into

two parts: Part 1, the recommendations for the Government(s), as the actor(s) from above; Part 2, the recommendations for the civil society and NGOs, as the actors from below.

PART 1: RECOMMENDATIONS FOR THE GOVERNMENT(S)

a. More awareness of and education on women's (human) rights

The general public, including women, has to be informed about and educated on its most fundamental rights and freedoms. Through the development of educational material on women's (human) rights and its dissemination in, for instance, schools and 'Sentronan di Bario' (neighbourhood centres), discriminatory gender stereotypes and fixed parental roles and harmful perceptions on feminism could be eradicated following the standards and guidelines under (Article 5) Women's Convention. The information and material has to be translated into 'Papiamentu' and into the other prominent languages spoken locally such as Dutch, English, Spanish and Chinese if necessary. Education in women's (human) rights has to start from an early age. The adaptation of the curricula with the structural incorporation of historical, political, legal and social courses on women's (human) rights from the primary level to higher educational levels has to take place. The introduction of women's studies at higher educational levels is imperative. Teachers and academics have to be educated in this regard to accomplish this goal.

b. Adult education

Adult education is essential. Through the creation of second opportunities (young) adults will obtain the required skills to conduct a dignified and decent way of living. Permanent and temporary, i.e. customised, programmes, such as the (revised) Compulsory Youth Programme, following the obligation set out in Article 4 Women's Convention and General Recommendation no. 25, have to be effectuated.

c. The development and implementation of a cohesive gender policy, i.e. gender national plan, based on multiple perspectives

The Executive, particularly the Ministry of Social Affairs, Labour and Welfare, has to engage itself in the development of a comprehensive gender policy as soon as possible. This policy should take notice of the fact that women form a heterogeneous group, which means that multiple aspects have to be taken into account. The sector of 'Family and Youth' has to be strengthened with the necessary (financial) means, capacity and expertise on gender, i.e. women's, issues. National, regional and international experts and organisations could be approached on this. Gender and women's issues departing from a human rights-based approach have to obtain a more prominent place on the governmental agenda. Thus, the adaptation of the business plan of the responsible Ministry and governmental programmes is highly recommended. The national gender policy should include guidelines and standards addressing every aspect of women's lives as prescribed in the Women's Convention, the General Recommendations, the concluding comments of the Committee and the Beijing Platform for Action and its periodic reviews.

d. The setting-up of a gender centre (institution)

The creation of an independent institution on gender (women) issues, where all (non) governmental information on gender (women's) issues, is registered and compiled is necessary, considering that the information is currently scattered among various institutions and actors. The objectives of this institution would be the compilation of all gender-based information and data and the creation of a framework for conducting research in cooperation with the commission of experts and research institutions. The information would be available for the public, without any distinction.

e. The collection of sex-disaggregated data

The collection of sex-disaggregated data is imperative. The strengthening of the Central Bureau of Statistics has to take place. Other data-directed institutions have to be established as well. The Executive has to expand or strengthen its own databases.

f. The visibility and strengthening of the national machinery

The governmental structure, which includes the national machinery on gender issues, has to be simplified and strengthened and it has to become more visible. Documentation on the governmental agencies involved ought to be set up properly. The community, particularly women, has to know which agency is responsible for which issue. Thus, the collaboration between the four Ministries involved with gender issues has to be formally instituted as soon as possible. A working plan for the execution of the (common) areas has to be drawn up and executed thoroughly. The creation of a separate agency within the sector of 'Family and Youth', in charge of the development, coordination, execution and monitoring of the gender policy, is highly recommended.

g. The contribution of legislature(s) in the adoption and adaptation of (gender-sensitive) legislation

All future laws have to be in accordance with the gender-sensitive equality norms of the Women's Convention, so as to exclude gender-based discriminatory laws. Thus, a preliminary review on the Women's Convention has to take place prior to the enactment of any law, by the responsible governmental agencies, such as the Advisory Council. A bigger project on the adaptation of (the most important) domestic law in accordance with the Convention has to follow afterwards. A plan of action has to be put in place by the legislature for the execution of this long-term project.

h. The rapid enactment of a General Act on equal treatment

The rapid enactment of a general national ordinance on equal treatment and non-discrimination is highly recommended. This law, and any future anti-discrimination legislation, should include provision(s) on the exclusion of multiple and intersectional discrimination in accordance with international standards and norms.

i. The contribution of the judiciary and legal experts in the enforceability of the Women's Convention

A more progressive and transformative approach on the interpretation of the direct enforceability of the (substantive) provisions of the Women's Convention has to be provided

by the judiciary. The dynamic nature of the Convention has to be recognised and accepted by it as well. The judiciary ought to use deliberately the Women's Convention, the General Recommendations and the Concluding comments on the periodic reports of the Kingdom and the case-law of the Committee, in cases where (the rights of) women are involved. Legal experts have to learn more about the contents of this Convention and use it in a reflective and calculated manner.

j. The appropriate allocation of financial and other resources

The Government has to provide as soon as possible the necessary means for (non) governmental organisations involved in gender issues, by readdressing its priorities. Social policies have to receive a more prominent role on the agenda of the Government alongside financial and economic policies. More NGOs have to be included in the annual budget of the Government. Departing from the principle of 'good public governance', information on the (justified) granting of public means to NGOs based on their programmes has to be made available. Monitoring mechanisms to scrutinise the effectiveness of the progress and execution of the programmes has to be developed and implemented. When it is deemed necessary, adaptations of the programmes have to be effectuated for the realisation of programmes and policies benefiting women and girls.

k. The establishment of a National Human Rights Institute

The establishment of an independent National Human Rights Institute, with quasi-judicial authority, has to be realised as soon as possible for the strengthening of the protection system for vulnerable social groups, such as women. The Executive has to allocate the financial resources for this. Moreover, more experts on human rights law and women's rights have to be engaged. Experts on other relevant fields should also be involved, for the creation of a multi-disciplinary team. External support from the Netherlands (the Kingdom) and international organisations, such as United Nations Agencies, has to be sought.

l. The introduction of general (awareness) programmes on the responsibilities of men and women

Specific governmental programmes directed at the responsibilities of men and women towards each other, their children and society in accordance with the standards and norms under the Women's Convention, have to be developed and disseminated with or without the cooperation of NGOs. Gender-based stereotypes and fixed parental roles related to, for instance, female-headed families, the education of children and every societal area, have to be addressed through (legal and policy) measures. Thus, the four functions of Article 5 Women's Convention have to be used consciously, together with the soft law adopted by the Committee. The branches of Government can use the mass and social media in this regard.

m. Family law

The family law of Curaçao (and every other legal area) has to be reviewed on its gender sensitivity and on its compliance with the Women's Convention. All the domestic provisions in breach of Article 16 Women's Convention and the subsequent General Recommendations should be amended or eradicated altogether.

n. The eradication of (extreme) poverty and backwardness

The development programmes and policies of the national and the Kingdom's Executives directed towards the eradication of (extreme) poverty, backwardness and exclusion of women should be based on the principles and standards enshrined in the Women's Convention. This means that every programme, particularly the programmes of the Ministry of Social Affairs, Labour and Welfare, should be scrutinised on their gender and human rights sensitivity prior to their implementation.

o. The strengthening of the (social) safety net for women

The current safety net provided for women and girls in distress has to be strengthened further and overseen by the local government agencies. This means that these agencies should be more involved in the support that is offered to women and girls by NGOs. This involvement would go beyond financial support.

p. Establishment of a national Constitutional Court

The establishment of a national Constitutional Court or full (subsequent) constitutional review accessible to governmental agencies and individuals is highly recommended. This Court would be in charge of the review of national law and policy on the fundamental rights enshrined in the Constitution and the norms and standards of international human rights law. Another possibility would be the introduction of prior review, following the example of Sint Maarten. Otherwise, the activation of constitutional review at Kingdom's level pursuant to Article 49 could bring more clarity to the matter. The judiciary would then have the authority to scrutinise national and Kingdom's law on higher law, such as the Charter and international human rights law.

q. The (re-)evaluation of the framework for development support and cooperation from the Kingdom

The development of a framework on cooperation at Kingdom's level for the realisation of women's rights at country level is required. The strengthening and/or re-evaluation of (financial and technical) support and assistance from the Kingdom (i.e. the Netherlands) for programmes on capacity building and the development of women should take place. Information and expertise on women's (human) rights law could be provided by Dutch human rights institutions to local institutions. All this would need to be accompanied by effective (periodic) monitoring and evaluation mechanisms.

r. The Kingdom's Government acts as the ultimate supervising/monitoring agency

The Kingdom's Executive should be more involved in the fulfilment of women's (human) rights at a domestic level. It could use the monitoring mechanisms it has at its disposal for this. Constructs based on a cooperation and assistance approach following, inter alia, a dynamic interpretation of Article 43 paragraph 2 or Article 38 paragraph 2 Charter could also be employed to ensure the realisation of these rights for a minimum standard of living and dignity for women in Curaçao. The Kingdom's Executive could also give guidelines for the protection, promotion and realisation of women's (human) rights at the domestic level based on its experience at the regional and international levels. To assess compliance levels, mid-term evaluations could be performed by a special Committee, as proposed by the

Council of State of the Kingdom. Following this, adjustment (national and/or Kingdom's) measures could be enacted to ensure the effectiveness of the fulfilment and protection of women's (human) rights.

s. The establishment and strengthening of regional cooperation mechanisms

Gathering of information and expertise from regional (Caribbean and Latin-American) human rights protection mechanisms and education is highly recommended. Cooperation with regional organisations, such as ECLAC, has to be strengthened and effective liaison has to be created.

t. International support

The State-Government has to seek as soon as possible the (financial and technical) support and assistance of Kingdom's (i.e. the Netherlands) and international organisations, such as United Nations Agencies, for the creation and implementation of a gender policy and a policy directed at the eradication of (extreme) poverty and backwardness among women, and for the improvement of their educational and awareness levels.

u. Communication between the Government and NGOs

Communication between branches of Government and NGOs has to be reinstated via a statutory consultative body. Consultation on gender issues and policies should take place on a structural basis, through which the involvement of NGOs is guaranteed. This ensures the inclusion of NGOs in the decision-making process.

PART 2: RECOMMENDATIONS FOR NGOS AND CIVIL SOCIETY

v. The performance of (further) research on gender issues and human rights law

The lack of research on gender issues has to be addressed as soon as possible. Every institution or person active in this field should be engaged in one way or the other in doing research on gender issues and human rights law. In this regard institutions of higher education have a (moral) obligation to make a contribution. With proper and in-depth research by independent experts, branches of Government would be able to introduce a proper gender policy and legal measures from a human rights perspective or address the many challenges which Curaçaoan women face daily.

w. The contribution of mass and social media

The role of mass and social media has to be prominent. Social and media practitioners have to be educated in gender issues, so that they can make a valuable contribution to the elimination of harmful gender stereotypes and parental roles within society. The objective of this is the elimination of the objectification and exploitation of women in the media and in society.

x. The setting-up of a commission of gender experts

A commission consisting of different experts on gender issues should be set up. The main objective of this commission would be to advise and inform the Government on gender issues and on the implementation of the Women's Convention, the Beijing Platform for

Action and the outcome of its reviews, and on the soft law of the Committee, and to lead research on gender in conformity with the international human rights discourse.

y. Communication and cooperation among NGOs and gender experts

Considering the lack of communication and cooperation among NGOs and between gender experts and NGOs, the creation and stimulation of effective communication and cooperation between the Government, NGOs and third parties involved is highly to be commended. The small island ('*mi toko*') mentality has to be abandoned. An exchange and databank of information should be created for the development of a more cohesive approach on gender and women's (human) rights among these actors.

z. The strengthening of the (gender) NGO sector

A central organisation, like the NGO Platform, has to be (re)instated, with the objective of addressing the many issues of the NGO sector by the NGOs themselves, supported (financially and technically) by the Executive. Thus, the experiences obtained by and through the NGO Platform should continue to benefit the sector. The Executive would have to play a prominent role in this by providing a framework through (financial) support, the formulation of strict conditions and by monitoring of the work done. The internal structure of NGOs has to be strengthened. The urgent establishment of human rights-oriented NGOs is imperative.

aa. Upgrading of know-how among NGOs and civil society

The NGO sector and civil society must undergo an upgrading process, whereby the latest developments in the field of international human rights law are learned and taken into account. The NGO personnel would have to receive further education and guidance on regional and international frameworks, guidelines and support systems. Cooperation with Kingdom's, regional and international institutions and NGOs could provide the necessary educational and upgrading support.

bb. Support and collaboration in reporting procedures

The involvement of NGOs in the compilation of the national report for the Committee should be more prominent. Effective participation by and information from the NGOs throughout the process should be established. NGOs should receive financial support for the compilation of their own shadow reports from the Executive. They would need to be aware of their responsibility to provide the Committee with information on the real position of local women.

cc. The input of civil society on gender and human rights issues

NGOs and private actors should be consciously involved with and aware of gender relations and harmful gender-stereotypes when implementing their projects and programmes. Furthermore, they should make a contribution to and monitor governmental programmes on gender and human rights issues. In this regard, women in leading positions could be presented as role models for the creation of a positive self-image among Curaçaoan women.

Samenvatting

De opkomst van vrouwenrechten in Curaçao

*De potentieel van het VN-Vrouwenverdrag voor de versterking
en de gelijke rechten van vrouwen in Curaçao*

Gezien het feit dat Curaçao sinds 10 oktober 2010, als een autonoom land binnen het Koninkrijk der Nederlanden, zijn eigen emancipatorische weg aan het bewandelen is, heb ik in dit boek onderzoek verricht naar de bijdrage die de internationaal geldende normen en standaarden in mensenrechten zouden kunnen leveren aan de verdere emancipatie van de Curaçaose vrouw, en de versterking van haar rechten.

Vrouwen worden in Curaçao op basis van verschillende gronden zoals hun geslacht, ras, huidskleur, sociale klasse en opleidingsniveau gediscrimineerd en achtergesteld. De toepassing van mensenrechten in het nationale systeem is van cruciaal belang voor het bewustwordingsproces, de ontwikkeling en de bescherming van deze kwetsbare groep in een post-koloniale samenleving, waarin ongelijke machtsstructuren, structurele ongelijke verdeling van de beschikbare middelen en geïnternaliseerde discriminatoire gedragspatronen prevaleren. Deze factoren bepalen de structuren die de genderrelaties vorm geven, waardoor bescherming vanuit een mensenrechtelijke benadering noodzakelijk wordt. Bovendien, de hardnekkige meervoudige discriminatie en uitbuiting die Curaçaose vrouwen ondervinden, eisen de uitbouw en versterking van de nationale beschermingsmechanismen.

Het internationale kader dat in het Internationaal Verdrag inzake de uitbanning van alle vormen van discriminatie jegens de vrouw (het VN-Vrouwenverdrag) is vastgelegd en de richtlijnen uit de Algemene aanbevelingen van het toezichthoudend Comité van het verdrag voor de uitbanning van discriminatie van vrouwen, eisen van de nationale overheidsorganen, als dragers van de verdragsverplichtingen, dat zij maatregelen nemen gericht op de verwezenlijking van vrouwenrechten conform deze standaarden.

De bijdrage van NGO's, c.q. *civil society*, moet bij dit proces inbegrepen worden als beweging om vanuit de basis het implementatietraject te versterken. Het uiteindelijke doel is het creëren van een effectief nationaal beschermingssysteem en de versterking van de positie van de vrouw, als rechthebbende, waardoor vrouwen in staat worden gesteld om op een volwaardige wijze aan maatschappelijke processen deel te nemen en de verdragsrechten te verwezenlijken.

De centrale vraag van het onderzoek luidt:

Hoe moet het VN-Vrouwenverdrag worden toegepast in het juridische (en sociale) systeem van Curaçao om te kunnen bijdragen aan de verbetering van de positie van vrouwen gelet op de specifieke socio-culturele context van Curaçao, en op welke wijze kunnen met name artikel 5 (gericht op het uitbannen van stereotype gedragspatronen) en artikel 16 (gericht op het garanderen van gelijke rechten in huwelijks- en familiebetrekkingen) instrumenten zijn om dit te bewerkstelligen?

Deze vraag is benaderd vanuit vijf deelvragen en aan de hand van een kader dat is ontwikkeld uitgaande van de 'PANEL' analyse, waarin de aspecten Participatie, Staatsaansprakelijkheid, Non-discriminatie, Versterking (Empowerment) en de Link met mensenrechten de uitgangspunten vormen. Deze aspecten zijn afgeleid van de plicht om mensenrechten te respecteren, te waarborgen en te verwezenlijken

Allereerst, het is vastgesteld dat heersende discriminatoire genderstereotypen de verdere ontwikkeling van Curaçaose vrouwen beïnvloeden. De ongelijkheid tussen mannen en vrouwen gebaseerd op genderpercepties en -rolpatronen wordt door verschillende sociaal-culturele mechanismen (on)bewust in stand gehouden. Geïstitutionaliseerde differentiatiepatronen bepalen de positie en de behandeling van de vrouw. Het gaat daarbij om structuren die gerelateerd zijn aan indeling op grond van etniciteit, ras, sociale klasse en gender. Deze structuren zijn met name ontwikkeld in de koloniale periode, door verschillende actoren waaronder ook de Kerk en de Shell olieraffinaderij, en zijn gebaseerd op Westerse, c.q. de Nederlands-Europese, en christelijke normen. Zij bepalen in feite nog steeds in belangrijke mate de behandeling en de mate van bescherming die vrouwen genieten in deze plurale samenleving.

Het verband dat het VN-vrouwenverdrag legt in artikel 5 tussen seksespecifieke rolpatronen en de discriminatie en onderdrukking van vrouwen houdt een verplichting in voor de Curaçaose overheid om maatregelen te treffen om deze patronen te veranderen ten voordele van vrouwen. Dit betekent dat de juridische gelijkstelling der geslachten alleen effect heeft, indien deze gepaard gaat met maatregelen gericht op de bestrijding en verandering van deze stereotypen en rolpatronen.

Het VN-vrouwenverdrag legt aan alle organen binnen het Koninkrijk deze 'transformerende' verplichting op. De ontwikkeling van Curaçaose vrouwen en de realisatie van hun rechten vanuit een mensenrechtelijke benadering is daarmee geboden. Alle overheidsactoren, inclusief de actoren op koninkrijksniveau, moeten een (pro)actief beleid voeren, waarbij monitoring plaatsvindt om de voortgang van de implementatie van de verplichtingen te toetsen.

Het genderperspectief behoort een integraal onderdeel te zijn van het nationale beleid conform de essentie van artikel 3 VN-Vrouwenverdrag, dat de Staten verplicht alle passende maatregelen te nemen om alle rechten te verwezenlijken. Hiervoor is een doelmatige allocatie van middelen, mankracht en expertise op nationaal niveau essentieel. De toezichthoudende rol van het Koninkrijk op het gebied van de waarborging van mensenrechten in Curaçao voortvloeiende uit artikel 43 lid 2 Statuut brengt de nodige verantwoordelijkheden voor Koninkrijksorganen met zich mee. Daarnaast zorgen de verdere uitdieping van de samenwerking tussen de landen binnen het Koninkrijk, de (in)directe invloed van het Koninkrijk in de interne aangelegenheden van Curaçao middels de respectievelijke consensusrijkswetten voor meer betrokkenheid van Koninkrijksorganen met nationale aangelegenheden van Curaçao. De maatregel opgenomen in het nieuwe artikel 27 lid 3 Statuut die bepaalt dat indien het land Curaçao nalaat regelgeving of andere maatregelen te treffen die noodzakelijk zijn voor de uitvoering van een verdrag, het Koninkrijk bevoegd is om maatregelen tegen hem te treffen, benadrukt de toezichthoudende rol van het Koninkrijk. Al deze voorzieningen brengen met zich mee dat de daartoe bevoegde koninkrijksorganen een sterkere rol hebben te spelen in de bescherming van vrouwenrechten op Curaçao.

Deze mechanismen leiden ertoe dat het ambtenarenapparaat en bestuurders geschoold moeten worden in de betekenis en gevolgen van het internationaal mensenrechtensysteem. Het beleid van zowel lands- als koninkrijksactoren moet gericht zijn op het waarborgen van de fundamentele rechten van vrouwen, het realiseren van de verdere ontwikkeling en garanderen van een menswaardig bestaan van deze heterogene sociale groep middels gedifferentieerd genderbewust (voorkeurs)beleid.

De ondeelbaarheid en onderlinge verbondenheid van mensenrechten moeten het uitgangspunt vormen voor de verwezenlijking van vrouwenrechten op Curaçao, waarbij de verzoening van de universele en de contextuele benaderingen de boventoon gaan voeren. De richtlijnen en standaarden ontwikkeld door de Commissie vormen het kader waarbinnen de nationale actoren moeten functioneren. De gelding en bescherming van vrouwenrechten op nationaal niveau worden dus aangevuld met en bijgesteld door het internationale kader.

De in verdragen neergelegde mensenrechten staan boven de nationale, c.q. federale rechten. Door hun dynamische ontwikkeling, het vrijheidsideaal en hun universaliteit hebben ze bovendien een hoog ideëel karakter. Bij de uitwerking van universele aanspraken op nationaal niveau kan rekening worden gehouden met de lokale socio-culturele context.

De plicht inzake het uitbouwen van een effectief nationaal beschermingssysteem brengt met zich dat er, naast een voor de burger duidelijk constitutioneel kader en een actieve opstelling van staatsorganen, een nationaal instituut voor mensenrechten met quasi-rechterlijke bevoegdheden bestaande uit experts met kennis van mensenrechten wenselijk is.

Het in het Koninkrijk geldende gematigd monistisch stelsel dat is vastgelegd in de constructie opgenomen in artikel 3 juncto artikel 5 Statuut en artikelen 93 en 94 GW, biedt thans onvoldoende bescherming aan Curaçaose vrouwen, omdat het nationaal recht alleen conform een ieder verbindende bepalingen in verdragen getoetst kan worden. Deze constructie vertoont beperkingen die het nationale beschermingssysteem niet ten goede komen, vooral als men de specifieke socio-culturele context van het eiland, het tekort aan verantwoordelijkheidsbesef onder bestuurders, de behoefte van vrouwen, en de interconnectie en onverdeeldheid van mensenrechten in ogenschouw neemt. Ik pleit in dit boek derhalve ook voor de versterking van de bescherming die aangeboden wordt middels onder andere de introductie van een (anterieur) nationaal constitutioneel Hof en/of volledige (posterieur) constitutionele toetsing. Dit is noodzakelijk gezien de democratische en gebrekkige monitoring binnen het Koninkrijk. Er moet uiteraard bij de bescherming rekening worden gehouden met de contextuele benadering en de internationale standaarden die uitgaan van de universaliteit van vrouwenrechten. De suggesties en progressieve benadering van de Commissie inzake de directe toepasbaarheid van het VN-Vrouwenverdrag op nationaal niveau vormen een impuls in de goede richting.

De sex-neutrale gelijkheids- en non-discriminatie normen, vastgelegd in onder andere artikel 3 Staatsregeling Curaçao, artikel 26 IVBPR en artikel 14 EVRM bieden wanneer zij worden gehanteerd in een formele benadering van gelijkheid (met nadruk op gelijke behandeling zonder oog voor de bestaande verschillen), onvoldoende waarborg tegen de meervoudige ongelijke behandeling van lokale vrouwen. Ze bieden niet genoeg steun voor een emancipatorische ontwikkeling. Naast het feit dat een meer materiële gelijkheidsbenadering de aantasting van de ongelijkheid in de verdeling van middelen mogelijk maakt, gaan internationale en regionale mensenrechtelijke verplichtingen ook

verder dan de formele benadering. Zij ondersteunen het bevorderen van gendergelijkheid door het creëren van gelijke kansen en de realisatie van structurele verandering op nationaal niveau. De strategieën en programma's die ontwikkeld worden door de overheidsinstanties dienen dus deze ontwikkelingen te volgen.

De Curaçaose overheid, als drager van de verdragsrechtelijke verplichtingen behoort derhalve haar reactieve benadering te wijzigen en vanuit een meer progressieve en transformerende instelling te werk te gaan. De ongelijke verdeling van de middelen, de beperkte mogelijkheden en kansen van vrouwen, zowel in de private als in de publieke sfeer, vragen om deze verandering in de gehele Curaçaose samenleving. De overheid heeft daarom de verplichting om middels de introductie van gendergevoelige sociale en wettelijke voorzieningen en strategieën conform het VN-Vrouwenverdrag, 'soft law' van de Commissie en andere internationale instrumenten, zoals de 'Beijing Declaration and Platform for Action', gelijke kansen te creëren om de achterstand van vrouwen te verkleinen en uiteindelijk te elimineren. De meervoudige en intersectionale discriminatie die Curaçaose vrouwen thans ervaren, noodzaken daartoe.

De voortvarende introductie van een algemene wet gelijke behandeling en andere relevante gelijke-behandelingsregelgeving door de wetgever zou als een eerste stap in de goede richting te beschouwen zijn. De incorporatie en toepassing van genderspecifieke voorzieningen ter bestrijding van de meervoudige discriminatie en onderdrukking van vrouwen verkrijgen daarmee een dwingendrechtelijk karakter. Daarnaast behoort het nationale recht, meer in het bijzonder het familierecht, een grondige mensenrechtentest, met expliciete aandacht voor genderaspecten, te ondergaan. De toetsing van bepalingen van familierecht opgenomen in het Boek 1 Burgerlijk Wetboek van art. 16 VN-Vrouwenverdrag en de aanbevelingen van de Commissie geven aan dat dit rechtsgebied discriminerende bepalingen bevat die gebaseerd zijn op genderstereotypen.

Sociale en culturele systemen, zoals het recht, het geloof, de taal, de media, het onderwijs en de familie houden (on)bewust genderstereotypen in stand. De effectieve participatie van vrouwen aan politieke, sociale, economische en culturele processen wordt mede door mechanismen gehinderd. Seksediscriminatie in het werk en de doorwerking van stereotype patronen over seksualiteit in de private sfeer verergeren de situatie. De noodzaak voor de ontwikkeling van educatieve programma's en strategieën voor de eliminatie van discriminerende genderpercepties is daarmee gegeven. Artikel 5 VN-Vrouwenverdrag en de Algemene Aanbevelingen van de Commissie kunnen richtinggevend zijn voor het ontwikkelen van beleid gericht op de verandering van deze patronen ten voordele van vrouwen. In dit kader kunnen de 4 functies van de bepaling goed van pas komen voor diens toepassing op nationaal niveau. Deze functies zijn die van (1) richtlijn bij de interpretatie van het verdrag, (2) een aanzet tot beleid met betrekking tot beeldvorming, (3) de stap richting de verwezenlijking van vrouwenrechten middels de uitbanning van stereotypen en (4) een kapstokbepaling waarmee de uitbreiding van de reikwijdte van het verdrag gerealiseerd kan worden.

Naast een gericht overheidsbeleid is het van belang dat vrouwen zelf bewust worden gemaakt van de patronen die hun achterstelling in stand houden. Zij moeten zich 'eigenaar gaan voelen' van hun rechten. Het gaat om een bewustwordingsproces, gesteund door maatschappelijke organisaties zoals NGO's en door de overheid. Deze actoren moeten daarvoor over voldoende kennis beschikken over de implicaties van een mensenrechtelijke

benadering, met name over de beschikbare instrumenten voor de realisatie van vrouwenrechten op nationaal niveau en de ontwikkeling van de positie van vrouwen.

Curaçaose vrouwen hebben al een bewustwordingsproces en de emancipatie doorgemaakt, met de steun van organisaties zoals ‘*Union di Muhenan Antiyano (UMA)*’, de ‘*Steering Committee Curaçao*’ en SEDA. Dat proces heeft geleid tot belangrijke verbeteringen voor vrouwen en de opheffing van discriminatoire wettelijke bepalingen en beperkende praktijken. Het is echter een feit dat door de kentering in dit proces de verdere emancipatie van lokale vrouwen, de ontwikkeling in de richting van een verdere implementatie van internationale mensenrechtelijke standaarden niet (adequaat) is voortgezet. De ingezette ontwikkeling is gestagneerd door factoren van verschillende aard, zoals stereotype denkbeelden en algemene onbekendheid met de betekenis en belang van het emancipatieproces voor zowel individuele vrouwen als de maatschappij, het gebrek aan inzicht in de potentiële betekenis en bijdrage van (het postkoloniale, c.q. transnationale) feminisme, en tenslotte een proces van overheidsbezuinigingen.

Het bevorderen van de participatie van alle vrouwen uit alle maatschappelijke lagen aan het besluitvormings- en implementatieproces is een van de doelstellingen van de Verklaring van Beijing en de daarbij horende documenten. Optimale naleving van het VN-Vrouwenverdrag en de Algemene aanbevelingen van de Commissie moeten het doel zijn van alle betrokken actoren. Zoals gezegd, NGO's hebben daarbij een belangrijke rol. Ontwikkelingsgerichte NGO's, zoals de ‘*SEDA*’ en ‘*Famia Plania*’, moeten uiteraard hun activiteiten voortzetten naast mensenrechtenorganisaties. Betere coördinatie en communicatie en een meer onafhankelijke opstelling naar de overheid toe is noodzakelijk ter bevordering van de verdere ontwikkeling van Curaçaose vrouwen vanuit een mensenrechtelijke benadering. NGO's kunnen een rol spelen door middels schaduwrapportages de Commissie te informeren over de reële stand van zaken met betrekking tot de naleving van het VN-Vrouwenverdrag en de (niet) nakoming van de verplichtingen door de overheid.

De regering van Curaçao behoort een actief beleid te voeren waarbij strategieën ontwikkeld worden die als doel hebben de verbetering van de positie van alle vrouwen en dus niet alleen een bepaalde groep vrouwen. Aantoonbare vooruitgang moet geboekt worden bij de implementatie van de verdragsverplichtingen, waarbij deze studie zich richt op de verplichtingen opgenomen in artikelen 5 en 16. De concluderende observaties van de Commissie aan de voormalige Nederlandse Antillen bieden bruikbare instrumenten voor de effectivering van vrouwenrechten op zowel nationaal als Koninkrijksniveau. Zij kunnen uitgewerkt, omgezet en vertaald worden in doelmatig beleid en strategieën, die middels effectieve monitoringsinstrumenten periodiek geëvalueerd en bijgesteld worden.

De uitbreiding van de toezichhoudende bevoegdheden van de Commissie middels het Facultatief Protocol van 1999 (namelijk het individuele klachtrecht) kan alleen betekenis hebben voor lokale vrouwen als informatie daaromtrent bekend is onder deze rechthebbenden via NGO's, c.q. civil society, overheidsinstanties en rechtsbeoefenaars. NGO's, c.q. civil society, als actoren aan de basis, hebben derhalve de verplichting om zich te scholen op het terrein van vrouwenrechten en vervolgens de vrouwen in te lichten over hun rechten, waarna een bewuste en assertieve attitude gecultiveerd kan worden. Daarnaast moeten praktijkbeoefenaars zoals advocaten, overheidsjuristen en rechters zichzelf meer bekend maken met het Verdrag en de werking van zijn mechanismen ter bevordering van de verdere bescherming van vrouwen. De praktijkbeoefenaars kunnen, wegens de directe

toepasbaarheid verleend aan artikel 5 VN-Vrouwenverdrag en de andere bepalingen van het verdrag, in de jurisprudentie van de Commissie, deze instrumenten opnemen in hun beschermingsarsenaal.

Naar mijns inziens zal de Curaçaose samenleving pas tot echte ontplooiing geraken op het moment dat de gelijke rechten van vrouwen zijn erkend en geëffectueerd worden vanuit het gender- en mensenrechtenperspectief. Vrouwen vormen de sleutel voor de daadwerkelijke ontwikkeling van dit eiland.

Sinopsis

Lantamentu di Derechonan di Hende muhe na Kòrsou

*E potensial di e Tratado di Hende muhé pa e empoderashon
i derechonan igual di hende muhe na Kòrsou*

Mirando e hecho ku Kòrsou for di 10 di òktober 2010, komo un pais outónomo den Reino Hulandes, ta kanando su propio kaminda emansipatorio, mi a hasi den buki aki un investigashon tokante ki e kontribushon di norma- i stardartnan di derechonan humano internashonal lo por tin pa emansipashon mas aleu di muhénan kurasoleño i e empoderashon di nan derechonan.

Hendenan muhé na Kòrsou ta wòrdu diskriminá i tené atras a base di diferente aspekto manera nan sekso, rasa, koló, klase soshal i nivel di estudio. E aplikashon di derechonan humano den e sistema nashonal ta di suma importansha pa e proseso di konsientisashon, desaroyo i protekshon di e grupo vulnerabel aki den un komunidad post-kolonial, kaminda strukturanan desigual di poder, repartishon desigual struktural di medionan disponibel i diskriminashon internalisá den patronchinan di komportashon ta prevalesé. E faktornan aki ta determiná e strukturanan ku ta forma e relashonnan di género, lokual ta hasi protekshon adishonal salí for di un aserkamentu di derechonan humano nesario. Banda di esaki, e diskriminashon múltiple persistente i eksplotashon ku muhénan kurasoleño ta eksperienshá, ta eksigí un ampliashon i fortifikashon di e mekanismonan di protekshon nashonal.

E kuadro internashonal ku ta stipulá den e Tratado Internashonal di Eliminashon di tur forma di diskriminashon kontra hende muhé (e Tratado) i e instrukshonnan for e Rekomendashonnan General di e Komishon di supervishon di e Tratado pa eliminashon di diskriminashon di Hende muhé, ta eksigí di órganonan estatal nashonal, komo kargadónan di derecho, pa nan tuma medidanan dirigí riba e realisashon di derechonan humano di hende muhé konforme e stándartnan aki.

E kontribushon ku Organisashonnan No-Gubernamental (ONG), i.o. sosiedat síviko, mester wòrdu inkluí den e proseso aki komo un movimentu salí for di fundeshi pa empoderá e trayekto di implementashon. E meta final mester ta e kreashon di un sistema di protekshon nashonal efektivo i fortifikashon di e posishon di e hende muhé, komo derechohabiente, pa asina hendenan muhe ta kapasitá pa na un manera digno partisipá na prosesonan soshal i e pa realisá e derechonan di e Tratado.

E pregunta sentral di e investigashon ta:

Kon e Tratado Internashonal di Derechonan Humano di Hende Muhé mester wòrdu apliká den e sistema hurídiko (i soshal) di Kòrsou pa duna un kontribushon pa mehorashon di e posishon di hende muhé, teniendo kuenta ku den e konteksto sosio-kultural spesífiko di Kòrsou, i na ki manera speshalmente artíkulo 5 (dirigí riba e eliminashon di patronchinan di kondukta stereotipiko) i artíkulo 16 (dirigí riba e garantia di derechonan igual den asuntunan matrimonial i di famia) por ta instrumentonan pa logra esaki?

E pregunta aki a ser aserká for di 5 sub-pregunta i a base di e kuadro ku a ser desaroyá ku ta sali for di e 'PANEL' análisis, kaminda e aspektonan 'Partisipashon', 'Responsabilidad estatal', 'No-diskriminashon', 'Empoderashon' i 'Konekshon ku derechonon humano' ta forma e puntonan di salida. E aspektonan aki ta derivá for di e obligashon di e estado pa respetá, protehá i realisá derechonon humano.

Na promé lugá, e ta establese ku stereotipo di género diskriminatorio bálido ta afektá e desaroyo mas aleu di hendenan muhé kurasoleño. E desigualdat entre hende hòMBER i hende muhé basá riba persepsionnan di género i patronchinan di ròl ta wòrdu mantené (in)konsientemente dor di diferente mekanismonan sosio-kultural. Patronchinan di diferensiasion institushonalisá ta determiná e posishon i trato di hende muhé. E ta bai aki pa strukturanan mará na klasifikashon basá riba etnisidat, rasa, klase sosial i género. E strukturanan aki a ser desaroyá sobretodo den era kolonial dor di diferente aktornan manera entre otro misa i Shell, i nan ta basá riba normanan oksidental i kristian. Nan ta determiná de fakto te ainda pa un gran parti e trato i e grado di protekshon ku hendenan muhé ta risibí den e sosiedat plural aki.

E konekshon ku e Tratado Internashonal di Hende muhé ta butá den artíkulo 5 entre patronchinan di género spesífiko i opreshon di hende muhé ta enserá un obligashon pa Gobièrnu di Kòrsou tuma medidanan pa kambia e patronchinan aki na benefisio di e hende muhé. Esaki ta nifiká ku e igualdat hurídiko di e seksonan lo por tin solamente efekto, si esaki bai kompañá ku medidanan dirigí riba e eliminashon i kambio di e stereotipo i patronchinan aki salí for di e perspektiva di género.

E Tratado ta pone riba tur órgano den Reino e obligashon 'transformativo' aki. Ku esaki e desaroyo di muhé nan kurasoleño mas aleu i e realisashon di nan derechonon salí for di un aserkamentu di derechonon humano ta obligatorio. Tur aktor gubernamental, inkluso e aktornan riba nivel di Reino, mester hiba un maneho (pro) aktivo, kaminda e monitoring nesario ta tuma lugá pa skrutiná e progreso e implementashon di e obligashonnan.

E perspektiva di género mester forma un parti integral di e maneho nashonal konforme e esensia di artíkulo 3 di e Tratado, ku ta obligá e estado di tuma tur medida nesario pa realisá tur e derechonon. Pa esaki alokashon efektivu di sufisiente medionan, kapasidat humano i ekspertisio pa realisashon di e derechonon aki riba nivel nashonal ta primordial. E ròl di supervishon di Reino riba e tereno di salbanguardia derechonon humano na Kòrsou salí for di artíkulo 43 insiso 2 Statüt ta trese kuné e responsabilidadnan nesario pa órganonan di Reino. Banda di esaki e profundisashon di e koperashon entre e paisnan den Reino, e influensha (in)direkto di Reino den e asuntunan interno di Kòrsou via di e respektivo leinan di konsenso di Reino ta sòru pa mas embolbimentu di órganonan di Reino ku asuntunan nashonal di Kòrsou. E medida inkorporá den artíkulo 27 insiso 3 di Statüt nobo ku ta stipulá ku si pais Kòrsou keda sin establese reglanan òf tuma otro medidanan ku ta nesario pa ehikutá un tratado, Reino tin e outoridat pa tuma medida kontra di dje, ta enfatisá e ròl di supervishon di Reino. Tur e provishonnan aki ta trese ku nan ku e órganonan di Reino kompetente mester hunga un ròl mas prominente den e protekshon i realisashon di derechonon di hendenan muhé na Kòrsou. E mekanismonan aki tin komo konsekuensia ku e aparato di ámtenar i di gobernantenan mester keda formá enkuanto e nifikashon i konsekuensia di e sistema internashonal di derechonon humano. E maneho di aktornan di pais i di Reino mester ta dirigí riba e protekshon di e derechonon fundamental di hende

muhé i e realisashon di mas desaroyo i garantisá un bida digno pa e grupo sosial heterogeno aki via di maneho diferensial ku ta gender-sensibel.

E indivisibilidat i konekshon di derechonan humano entre nan mester forma e punto di salida pa e realisashon di derechonan humano di hende muhé na Kòrsou, kaminda e rekonsiliashon di e aserkamentunan universal i kontekstual ta bai rigi. E instrukshonnan i stándartnan desaroyá pa e Komishon ta forma e kuadro den kual e aktornan nashonal mester funshoná. E balides i protekshon di derechonan humano di hende muhé riba nivel nashonal pues ta wòrdu komplementá i ahustá dor di e kuadro internashonal.

E derechonan humano stipulá den tratadonan ta pará riba leinan nashonal, i.o. federal. Pa motibu di nan desaroyo dinámiko, e ideal di libertat i nan universalidat nan tin ademas un karakter ideal haltu. Ora di traha e demandanan universal na nivel nashonal por tene kuenta ku e konteksto sosio-kultural lokal,

E obligashon pa krea un sistema di protekshon nashonal efektivu ta trese kuné ku e sistema, banda di un kuadro konstitushonal kla pa e suidadano i un aktitut aktivo di e órganonan estatal, un instituto nashonal pa derechonan humano ku outoridatnan hudisial paresido konsistiendo di ekspertonan ku konosementu di derechonan humano ta deseabel.

E sistema monístiko moderá bálido den Reino, kual ta stipulá den e konstrukshon legal den artíkulo 3 konhuntamente ku artíkulo 5 di Statüt i artíkulonan 93 i 94 di e Konstitushon Hulandes, aktualmente no ta ofresé sufisiente protekshon na muhénan kurasoleño, pasobra lei nashonal solamente por wòrdu revisá na provishonnan den e tratadonan ku ta mara tur persona. E konstrukshon aki tin limitashonnan ku no ta benefisiá e sistema di protekshon nashonal, spesialmente ora tuma na kuenta e konteksto sosio-kultural spesífiko di e isla, e falta di e sentido di responsabilidat bou di gobernantenan, e nesidat di hendenan muhé i e interkonekshon i union di derechonan humano. Ta pèsei ami ta boga den e buki aki tambe pa fortaleimentu di e protekshon ku ta ser ofresé dor di entre otro e introdukshon di un Korte konstitushonal nashonal (anterior) i/o eskrutino konstitushonal kompleto (posterior). Esaki ta nesario mirando e défisit demokrátiko i di monitoring den Reino. Naturalmente mester tene kuenta den e protekshon aki ku e aserkamentu kontekstual i e stándartnan internashonal ku ta sali for di universalidat di e derechonan humano di hende muhé. E sugerenshanan i e aserkamentu progresivo di e Komishon enkuanto e aplikashon direkto di e Tratado na nivel nashonal ta un impulso den e direkshon korekto.

E normanan di igualdat i no-diskriminashon sekso-neutral, stipulá den entre otro artíkulo 3 di e Areglo di Estado di Kòrsou, artíkulo 26 di e Tratado Internashonal di Derechonan Sivil i Polítiko i artíkulo 14 di e Tratado Europeo di Derechonan Humano, ta ofresé ora nan wòrdu usá den un aserkamentu formal di igualdat (ku énfasis riba trato igual sin bista pa e diferenshanan eksistente), insufisiente protekshon kontra di e trato desigual múltiple di muhénan lokal. Nan no ta duna sufisiente sosten pa un desaroyo emansipatorio. Banda di e echo ku un aserkamentu mas dirigí riba igualdat material por influenshá e repartishon desigual di medionan, responsabilidatnan di derechonan humano internashonal i regional ta bai mas aleu ku e aserkamentu formal. Nan ta sostené e promoshon di igualdat di género dor di e kreashon di oportunitatnan igual i e realisashon di kambionan struktural riba nivel nashonal. E strategianan i programanan ku ta wòrdu desaroyá dor di instanshanan gubernamental mester sigui e desaroyonan aki.

Gobièrnu di Kòrsou, komo e kargadó di obligashon di tratadonan, mester kambia su aserkamentu reaktivo i traha for di un aktitut mas progresivo i dinámiko. E repartishon

desigual di medianan, e oportunidatnan i posibilidatnan limitá di hende muhé, tantu den sektor privá komo públiko, ta pidi e kambio aki na benefisio di igualdat den género den e komunitat kompletu di Kòrsou. Pèsei gobièrnu tin e obligashon pa medio di introdukshon di provishonnan soshal i legal ku ta genero-sensibel i strategianan conforme e Tratado, e 'soft law' di e Komishon i otro instrumentonan internashonal, manera e 'Deklarashon di Beijing i Plataforma di Akshon', pa krea oportunidatnan igual pa minimalisá o eliminá e retraso di hendenan muhé kurasoleño. E diskriminashon múltiple i interseksional ku muhénan kurasoleño ta eksperenshando, ta hasi esaki nesesario.

E introdukshon rápido di un Lei riba trato igual i otro legislashon tokante trato igual dor di e legislador lo ta un promé stap den e bon direkshon. E inkorporashon i aplikashon di provishonnan dirigí spesífikamente riba género pa kombati diskriminashon múltiple i opreshon di hende muhé ta haña asina ei un karakter obligatorio. Banda di esaki leinan nashonal, spesífikamente e Lei di Famia, mester pasa dor di un eskrutinio di derechonan humano profundo, ku atenshon spesífiko pa e aspektonan di género. E eskrutinio di provishonnan di Lei di Famia den e Buki 1 di Kódigo Sivil na artíkulo 16 di e Tratado i e Rekomendashonnan General di e Komishon a demostrá ku e tereno di lei aki ta kontené provishonnan diskriminatorio basá riba stereotiponan di género.

Sistemanan soshal i kultural, manera lei, religion, idioma, prensa, edukashon i famia ta tene (in)konsientemente stereotipo di género na vigor i esaki mester kambia. E partisipashon efektivo di hendenan muhé den prosesonan polítiko, soshal, ekonómiko i kultural ta ser strobá dor di e funshonamentu konservativo di e institutonan i mekanismonan aki. Diskriminashon di sekso na trabou, i e seguimentu di patronchinan stereotipo tokante seksualidat den e esfera privá ta hasi e situashon mas grave. E nesesidat pa desaroyá programa- i strategianan edukativo pa eliminá persepsionnan diskriminatorio di género ta hustifiká esei. Artíkulo 5 di e Tratado i e Rekomendashonnan General di e Komishon por ta indikativo pa desaroyá un maneho dirigí riba e kambio di patronchinan akí na benefisio di hende muhé. Den e kuadro aki e 4 funshonnan di e provishon ta sirbi bon pa su aplikashon na nivel nashonal. E funshonnan aki ta esun di (1) indikashon pa interpretashon di e Tratado, (2) un empuhe pa yega na maneho enkuantu kreashon di imágen, (3) e paso den e direkshon di e realisashon di derechonan di hende muhé pa medio di eliminashon di stereotiponan i (4) un provishon di kaminda e ekspanshon di e alkanse di e tratado por ser realisá.

Banda di un maneho di Gobièrnu dirigí ta importante ku hendenan muhé mes wòrdu konsientisá tokante di e patronchinan dañino ku ta tene nan atras. Nan mester 'kuminsá sinti nan mes propetario' di nan derechonan. E ta bai pa un proseso di konsientisashon, sostené dor di organisashonnan soshal, manera ONG, i pa Gobièrnu. E aktornan aki mester pa esaki tin suficiente konosementu tokante e implikashonnan di un aserkamentu di derechonan humano, sobretodo tokante e instrumentonan disponibel pa e realisashon di derechonan humano di hende muhé riba nivel nashonal i e desaroyo di e posishon di hendenan muhé.

Hendenan muhé kurasoleño a eksperenshá kaba un proseso di konsientisashon i emansipashon, ku e sosten di organisashonnan manera 'Union di Muhenan Antiyano (UMA)', 'Steering Committee' Kòrsou i SEDA. E proseso a kondusí na kambionan signifikante pa hendenan muhé i e eliminashon di provishonnan diskriminatorio i práktikanan ku ta stroba desaroyo. Sinembargo ta un echo ku dor di retraso den e proseso aki e emansipashon di hende muhé lokal mas aleu e desaroyo den direkshon di mas implementashon di stándartnan internashonal di derechonan humano no a kontinuá (adekuadamente). E desaroyo ku

a kuminsá a stanka dor di faktornan di diferente índole, manera ideanan stereotipo i ignoransha general enkuantu e nifikashon i importansha di e proseso emansipatorio tantu pa muhénan individual i komo pa e komunidad, un falta di vishon enkuantu e nifikashon potenshal i kontribushon di feminismo (post-kolonial, i.o. transnashonal), i finalmente un proseso di medidanan di ousteridat.

Stimulashon di e partisipashon di tur hende muhé di tur gremio sosial na e proseso di tomo di desishon i e proseso di implementashon ta un di e metanan di e 'Deklarashon di Beijing i Plataforma di Akshon' i e dokumentonan pertenesiente. Kumplimentu optimal ku e Tratado i e Rekomendashonnan General di e Komishon mester ta e meta pa tur e aktornan embolbí. Manera apuntá ONG tin un ròl masha importante den esaki. ONG dirigí riba desaroyo, manera SEDA i Famia Plania, naturalmente mester kontinuá nan aktividatnan, banda di organisashon di derechonan humano. Mihó kordinashon i komunikashon i un aktitut mas independiente pa ku Gobièrnu ta nesario pa stimulá e desaroyo di hendenan muhé kurasoleño mas aleu, salí for di un aserkamentu di derechonan humano. ONGnan por hunga un rol dor di informá e Komishon via e '*shadow-reports*' tokante e situashon real entorno e kumplimentu ku e Tratado i e (no) kumplimentu di Gobièrnu pa ku su obligashonnan.

Gobièrnu di Kòrsou tin ku hiba un maneho aktivo kaminda strategianan ta ser desaroyá ku e meta pa drecha e posishon di tur hende muhé, i no solamente un grupo spesífiko di hende muhé. Progresonan visibel mester ser alkansá durante e implementashon di e obligashonnan, kaminda e estudio aki ta dirigí su mes riba e obligashonnan den artíkulo 5 i 16. E opservashonnan konkluyente di e Komishon pa Antia Hulandes ta ofresé instrumentonan útil pa efektuá e derechonan humano di hende muhé riba nivel di Pais i di Reino. Nan por wòrd elaborá, transformá i tradusí den maneho i strategianan efikas, ku pa medio di un sistema di monitoring efektivo ta ser evaluá i adaptá periódikamente.

E ampliashon di e kompetensha di supervishon di e Komishon pa medio di e Protokòl Fakultativo di 1999 (esta e derecho di keho individual) por tin solamente nifikashon pa muhénan lokal si informashon tokante nan ta desiminá bou di e derechohabientenan via di ONG, i.o. sosiedat sivil, instanshanan gubernamental i praktikantenan di lei. ONG, i.o. sosiedat sivil, komo aktornan na e fundeshi, tin por lo tanto e obligashon pa eduká nan mes riba e tereno di derechonan humano di hende muhé i pa despues eduká hendenan muhé den esaki, p'asina un aktitut konsiente i asertivo por ser kultivá. Banda di esaki praktikantenan di lei, manera abogadonan, huristanan di Gobièrnu, huesnan, mester studia e Tratado i e funshonamentu di su mekanismonan pa stimulá mas protekshon pa hende muhé. Praktikantenan di lei por, dor di e aplikashon direkto duná na artíkulo 5 di e Tratado i na tur e otro provishonnan via di e hurisprudensia di e Komishon, inkorporá e instrumentonan aki den nan arsenal di protekshon.

Na mi manera di miré e komunidad kurasoleño lo por solamente yega na un desaroyo real na momentu ku e derechonan igual di hende muhé ser rekonosé i ta efektuá for di un perspektiva di género i derechonan humano. Hende muhé ta e yabi pa e desaroyo real di e isla aki.

Resumen

El Surgimiento de los Derechos de la Mujer en Curazao *El potencial de la Convención sobre los derechos de las mujeres para el fortalecimiento y la igualdad de las mujeres en Curazao*

Dado que Curazao desde 10 de octubre 2010 ha tomado su propio camino emancipatorio como un país autónomo dentro del Reino de los Países Bajos, he investigado en este libro como las normas y los estándares de los derechos humanos válidos internacionalmente, podrían contribuir a una mayor emancipación de la mujer de Curazao y el fortalecimiento de sus derechos.

Las mujeres en esta sociedad han sido discriminadas y desfavorecidas basadas en diversos motivos tales como el sexo, la raza, el color, la clase social y la educación. La aplicación de los derechos humanos en el sistema nacional es crucial para la concienciación, el desarrollo y la protección de este grupo vulnerable en una sociedad post-colonial, donde prevalecen las estructuras de poder desiguales, la distribución desigual de los recursos estructurales y las actitudes discriminatorias internalizadas. Estos factores determinan las estructuras que forman las relaciones de género, por lo que la protección adicional de un enfoque de derechos humanos se hace necesaria. Además, la persistencia de la discriminación múltiple y la explotación que las mujeres de Curazao encuentran, exige el aumento y fortalecimiento de los mecanismos de protección nacionales.

El marco internacional estipulado en la Convención sobre la eliminación de todas las formas de discriminación contra la mujer de las Naciones Unidas (la Convención) y las directrices en las Recomendaciones generales de la Comisión de supervisión, exigen de los servicios públicos, como portadores de las obligaciones del tratado, que tomen medidas dirigidas a la realización de los derechos de las mujeres en conformidad con estas normas.

La contribución de las organizaciones no gubernamentales o de la sociedad civil debe ser incluidas como movimiento para fortificar la trayectoria de implementación desde la base. El objetivo final es la creación de un sistema de protección nacional efectivo y el fortalecimiento de la posición de la mujer, como derechohabiente, por lo que la mujer tenga la posibilidad de participar dignamente en los procesos sociales y así ella misma pueda dar una contribución significativa en la realización de sus derechos.

La pregunta central de la investigación es, por lo tanto:

¿Cómo se puede aplicar la Convención en el sistema judicial y social de Curazao para poder contribuir al mejoramiento de la posición de la mujer teniendo en cuenta el contexto socio-cultural específico de Curazao, y de qué manera el artículo 5 (dirigido a la erradicación de patrones de comportamiento estereotipo) y el artículo 16 (dirigido a garantizar derechos iguales en relaciones matrimoniales y familiares) en particular puedan ser herramientas para lograr esto?

Esta cuestión ha sido abordada desde cinco subpreguntas, y sobre la base del marco que se ha desarrollado a partir del análisis “PANEL”, en el que los aspectos Participación, Responsabilidad del Estado, No discriminación, Fortalecimiento (*Empowerment*) y el Vínculo con los derechos humanos son los puntos de partida. Estos aspectos se derivan de la obligación de respetar, garantizar y realizar los derechos humanos.

En primer lugar, se ha determinado que los estereotipos discriminatorios de género que prevalecen, influyen el desarrollo de las mujeres de Curazao. La desigualdad entre hombres y mujeres basada en las percepciones de género y los patrones de papeles de género se mantiene (in)deliberadamente por diferentes mecanismos socio-culturales. Patrones de diferenciación institucionalizados determinan la posición y el trato de la mujer. Se trata aquí de estructuras relacionadas con clasificación a base de etnicidad, la raza, la clase social y el género. Estas estructuras han sido desarrolladas especialmente en el período colonial por diferentes actores debajo del cual la Iglesia y la refinería de petróleo de Shell, y son basadas en valores occidentales, o holandeses europeos y cristianos. De facto ellas siguen determinando por gran parte el trato y el grado de protección que las mujeres disfrutaban en esta sociedad plural.

El vínculo que la Convención establece en el artículo 5 entre los roles de género específicamente de sexo y la discriminación y la opresión de las mujeres encierra una obligación del gobierno de Curazao para tomar medidas para cambiar estos patrones en beneficio de las mujeres. Esto significa que la igualdad jurídica de los sexos se hará efectiva sólo si está acompañada de medidas destinadas a combatir y cambiar estos estereotipos y roles de género desde una perspectiva de género.

La Convención impone por lo tanto, a todas las entidades del Reino esta obligación ‘transformativo’. El desarrollo adicional de las mujeres de Curazao y la realización de sus derechos desde un enfoque de derechos humanos son por lo tanto ordenados. Todos los actores estatales, incluyendo el nivel de los actores del Reino, necesitan llevar una política proactiva, donde se hace seguimiento para evaluar el progreso de la implementación de las obligaciones.

La perspectiva de género debe ser una parte integral de la política nacional de acuerdo con la esencia del artículo 3 de la Convención sobre la Mujer de las Naciones Unidas, que obliga al parlamento tomar las medidas apropiadas para realizar todos los derechos. Con este fin la asignación eficiente de suficientes recursos, la mano de obra y conocimientos para la realización de estos derechos a nivel nacional es esencial. La función de supervisión del Reino en el campo de garantizar los derechos humanos en Curazao en virtud del artículo 43 inciso 2 del Estatuto, trae consigo las responsabilidades necesarias para los órganos del Reino. Además la profundización aun mas de la cooperación entre los países dentro del Reino, la influencia (in)directa del Reino en los asuntos internos de Curazao a través de las leyes de consenso del Reino respectivos, causan más involucramiento de órganos del Reino con asuntos nacionales de Curazao. La medida incluida en el nuevo artículo 27, inciso 3 del Estatuto que determina que si el país Curazao deje de establecer reglas o tomar medidas que son necesarias para la ejecución del Tratado, el Reino tiene la autorización para tomar medidas contra ella, enfatiza el rol de supervisión del Reino. Todas estas provisiones traen consigo que las entidades del Reino designadas desempeñen un papel en la protección de los derechos de las mujeres en Curazao. Estos mecanismos causan que la administración

pública y los administradores deban ser formados en la significación y las consecuencias del sistema de derechos humanos internacional. El manejo de tanto los actores nacionales como los del Reino debe ser dirigido a garantizar los derechos fundamentales de la mujer, realización de un mayor desarrollo y garantizar una existencia digna de este grupo social heterogéneo por medio de una política en función del género (preferido).

La indivisibilidad y relación mutua de derechos humanos deben formar el punto de salida para realizar los derechos de la mujer en Curazao, donde la reconciliación entre el acercamiento universal y contextual deba llevar la voz cantante. Las directivas y estándares desarrolladas por la Comisión forman el cuadro dentro del cual deben funcionar los actores nacionales. La validez y protección de los derechos de la mujer a nivel nacional se complementan y ajustan por el marco internacional.

Los derechos humanos estipulados en los tratados están encima de derechos nacionales así como derechos federales. A través de su desarrollo dinámico, el ideal de la libertad y de su universalidad tienen además un carácter idealista alta. Al elaborar los derechos universales a nivel nacional uno puede tener en cuenta el contexto socio-cultural local.

La obligación relativa a la elaboración de un sistema de protección nacional eficaz implica que el sistema, además de un marco constitucional comprensible para el ciudadano y una disposición activa de las agencias estatales existentes, también debe incorporar un instituto nacional de derechos humanos con poderes judiciales fingidos consistiendo preferiblemente de expertos con conocimiento sobre los derechos humanos.

El sistema monístico moderado válido en el Reino que ha sido establecido en el artículo 3 y el artículo 5 del Estatuto y los artículos 93 y 94 Constitución Holandés, ahora ofrece una protección insuficiente a las mujeres de Curazao, porque se puede evaluar el derecho nacional solamente conforme estipulaciones en los tratados que vinculan a cada quien. La construcción tiene limitaciones que no beneficia el sistema de protección nacional, sobre todo cuando el contexto socio-cultural específico de la isla, la falta de responsabilidad de los gobernantes, las necesidades de las mujeres, así como la interconexión y la propiedad indivisa de los derechos humanos se toman en cuenta. Por lo tanto abogo en este libro también por fortalecimiento de la protección que se ofrece por medio de entre otras cosas introducción de un corte constitucional nacional y/o una evaluación constitucional completa (posterior). Esto es necesario en vista del '*monitoring*' democrático y deficiente dentro del Reino. En cuanto a la protección hay que tener en cuenta el enfoque contextual y las normas internacionales, que parten de la universalidad de los derechos de la mujer. Las sugerencias y el acercamiento progresivo de la Comisión en cuanto a la aplicabilidad directa de La Convención a nivel nacional es un impulso en la dirección correcta.

Las normas de igualdad y no discriminatorio sexo neutral establecidas en el artículo 3 Arreglo de Estado de Curazao, el artículo 26 CIDCP y el artículo 14 CEDH ofrecen cuando son manejadas en un acercamiento formal de igualdad (con énfasis en trato igual sin ver diferencias existentes), insuficiente garantía contra la discriminación múltiple de las mujeres locales. No ofrecen suficiente sostén para un desarrollo emancipador. Aparte del hecho que la igualdad material hace posible el deterioro de la desigualdad en la distribución de recursos, las obligaciones de derechos humanos internacionales y regionales siguen su camino. Ellas sostienen el progreso de la igualdad de género a través de la creación de oportunidades iguales y la realización de cambio estructural a nivel nacional. Las estrategias y los programas desarrollados por el gobierno deben, por lo tanto seguir este desarrollo.

Por lo tanto el gobierno de Curazao, como titular de deberes judiciales cuando se trata de tratados, debe modificar su enfoque reactivo para proceder desde una actitud más progresiva y que transforma. La distribución desigual de los recursos, las posibilidades y oportunidades limitadas de las mujeres, tanto en lo privado y lo público, exigen este cambio en favor de la igualdad de género y la entera comunidad de Curazao completa. Por lo tanto el gobierno tiene la obligación de crear oportunidades iguales para reducir el atraso de la mujer y eventualmente eliminarlo a través de la introducción de servicios y estrategias sociales y jurídicas conforme la Convención, ‘*soft law*’ de la Comisión y otros instrumentos internacionales, como la ‘Declaración de Beijing y Plataforma de Acción’. La discriminación múltiple e interseccional que las mujeres de Curazao experimentan actualmente, requiere este propósito.

La rápida introducción de una ley general de la igualdad de trato y otras regulaciones relevantes de la legislatura sería considerada como un primer paso en la dirección correcta. La incorporación y aplicación de las disposiciones específicas de género para combatir la discriminación múltiple y la opresión de las mujeres obtienen con eso un carácter de ley obligatoria. Además la legislación nacional, particularmente el derecho de familia, debe someterse a una prueba de los derechos humanos a fondo, con atención explícito para los aspectos de género. La prueba de las disposiciones de la ley de familia contenidas en el libro de Código Civil 1, artículo 16 de la Convención y las Recomendaciones generales de la Comisión indican que esta área del derecho, contiene disposiciones discriminatorias basadas en los estereotipos de género.

Los sistemas sociales y culturales, como el derecho, la religión, el idioma, los medios de comunicación, la educación y la familia (in)conscientemente mantienen los estereotipos de género, y esto debe cambiar. La participación efectiva de la mujer en los procesos políticos, sociales, económicos y culturales se ve obstaculizada en parte por mecanismos. Discriminación de sexo en el lugar de trabajo y la continuación de patrones estereotipo sobre sexualidad en el ambiente privado empeoran la situación. La necesidad para el desarrollo de programas educativos y estrategias para la eliminación de las percepciones discriminatorias de género ha sido dada con esto. Artículo 5 de la Convención y las Recomendaciones generales de la Comisión pueden ser las guías para el desarrollo de un manejo dirigido a cambiar estos patrones a favor de las mujeres. En este contexto, las cuatro funciones de la estipulación pueden ser muy útiles para su aplicación a nivel nacional. Estas funciones son los de (1) directiva para la interpretación del tratado, (2) un empuje al manejo con relación a formación de imagen, (3) el paso hacia la realización de derechos de mujeres por medio de erradicación de estereotipos y (4) una estipulación de percha con el cual se puede realizar la expansión del alcance del tratado.

Además de un manejo de gobierno dirigido es importante que a las mujeres se les haga tomar conciencia de los patrones perjudiciales que perpetúan su subordinación. Deben comenzar a sentirse ‘propietarios’ de sus derechos. Se trata de un proceso de concientización, sostenido por la sociedad civil como ONG y por el gobierno. Por lo tanto estos actores deben tener suficiente conocimiento de las implicaciones de un acercamiento de derechos humanos, especialmente de los instrumentos disponibles para la realización de derechos de mujeres a nivel nacional y el desarrollo de la posición de la mujer.

Las mujeres de Curazao han pasado por el proceso de concientización y emancipación con el sostén de organizaciones como ‘*Union di Muhenan Antiyano (UMA)*’, ‘*Steering*

Committee Curaçao' y la SEDA. Este proceso ha llevado a mejoramientos importantes para la mujer y la abolición de estipulaciones judiciales y prácticas limitativas. Sin embargo es un hecho que por la reversión de este proceso, la emancipación más allá de la mujer local, el desarrollo hacia una implementación más allá de estándares de derechos humanos internacionales no ha sido continuado adecuadamente. El desarrollo iniciado ha sido estancado por factores de diferente índole, como imágenes estereotipo y desconocimiento general con la significación e importancia del proceso de emancipación tanto para la mujer individual como la comunidad, la falta de visión de la significación potencial y la contribución del feminismo (postcolonial o transnacional), y por último un proceso de recortes del gobierno.

Promover la participación de las mujeres de todos estratos de la comunidad en la toma de decisiones y el proceso de implementación es una de las metas de la Declaración de Beijing y los documentos pertenecientes. Cumplimiento óptimo de la Convención y las Recomendaciones de la Comisión debe ser el objetivo de todos los actores. Como ya dicho, las ONGs tienen un papel importante. Organizaciones no gubernamentales fijadas en el desarrollo tales como la SEDA y '*Famia Plania*' obviamente deben continuar sus operaciones al lado de otras organizaciones de derechos humanos. Mejor coordinación y comunicación y una actitud más independiente respecto al gobierno es necesario para promover el desarrollo adicional de las mujeres de Curazao desde un enfoque de derechos humanos. Las ONGs pueden desempeñar un papel importante en informar la Comisión por medio de reportajes acerca de la situación real con respecto al cumplimiento con la Convención y el (no) cumplimiento de las obligaciones por el gobierno.

El gobierno de Curazao debe seguir una política donde desarrolle estrategias que tienen como objetivo mejorar la situación de todas las mujeres, no sólo un grupo particular de mujeres. Hay que obtener avances comprobables con la implementación de las obligaciones del tratado, cual estudio se dirige a las obligaciones establecidas en los artículos 5 y 16. Las observaciones finales de la Comisión de las antiguas Antillas Holandesas ofrecen herramientas útiles que se pueden utilizar para efectuar derechos de la mujer aplicadas tanto a nivel nacional como del Reino. Estos pueden ser desarrollados, implementados y traducidos en las políticas y estrategias efectivas, que sean evaluados y ajustados periódicamente a través de las herramientas de supervisión eficaces.

La expansión de los poderes de supervisión de la Comisión a través del Protocolo Facultativo de 1999 (es decir el derecho de queja individual) sólo puede tener sentido para las mujeres locales si es conocida a estos derechohabientes a través de organizaciones no gubernamentales o la sociedad civil, el gobierno y los profesionales del derecho. Por lo tanto las organizaciones no gubernamentales o la sociedad civil, actores de abajo, tienen la obligación de enseñar a sí mismos en el campo de los derechos de las mujeres y luego de informar a las mujeres sobre sus derechos, y después cultivando una actitud consciente y asertivo. Además, los profesionales, como los abogados, los juristas públicos y los jueces se hacen más familiares con el Convención y el funcionamiento de sus mecanismos para fomentar la protección de la mujer. Los profesionales, a causa de la aplicabilidad directa del artículo 5 del Convención sobre la Mujer de las Naciones Unidas y las demás disposiciones del tratado, en la jurisprudencia de la Comisión, pueden incluir estos instrumentos en su arsenal de protección.

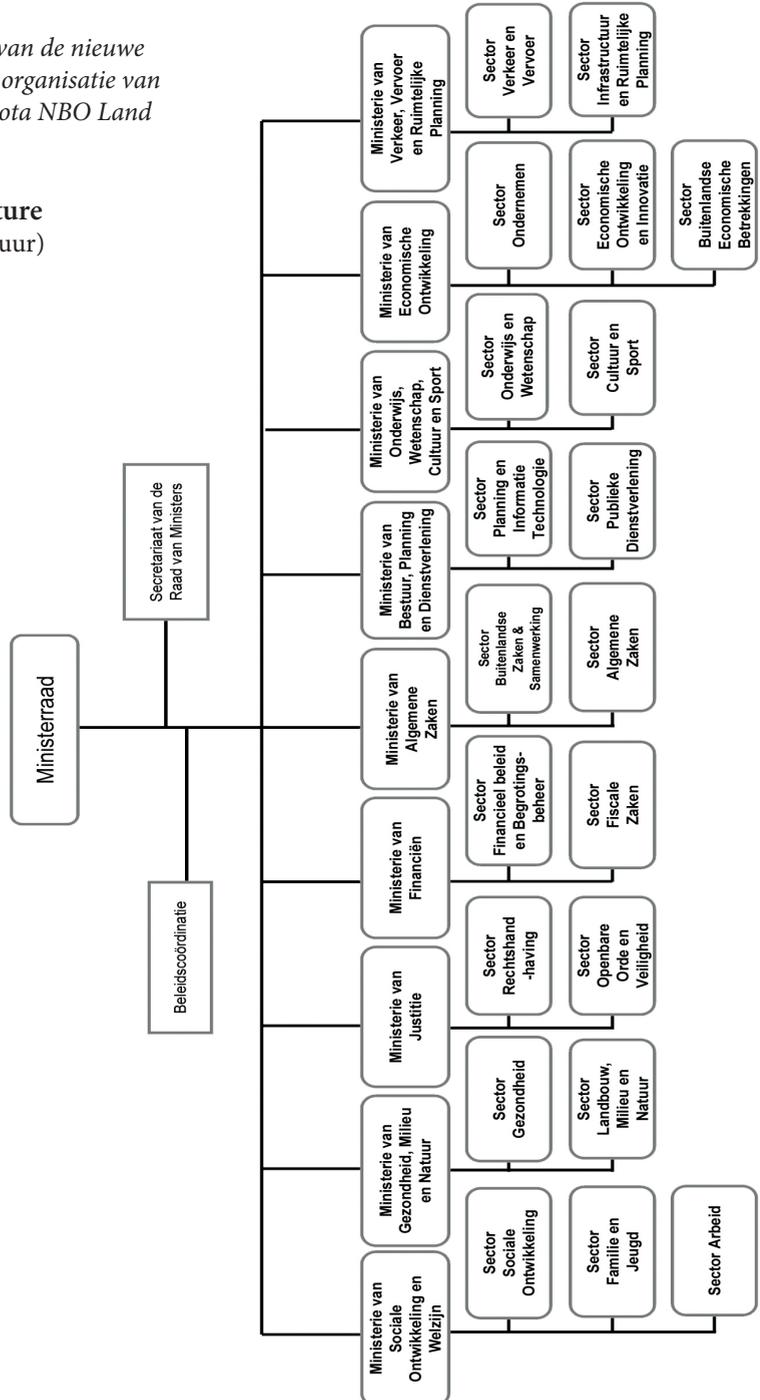
En mi opinión, la sociedad de Curazao sólo podrá conseguir un verdadero desarrollo en el momento que la igualdad de derechos de la mujer sea reconocida y aplicada desde una perspectiva de género y de derechos humanos. Las mujeres son la clave para el desarrollo efectivo de esta isla.

Annexes

Annex 1

Source: Nota 'Uitwerking van de nieuwe ambtelijke en bestuurlijke organisatie van het Land Curaçao' (Eindnota NBO Land Curaçao), 12 March 2009

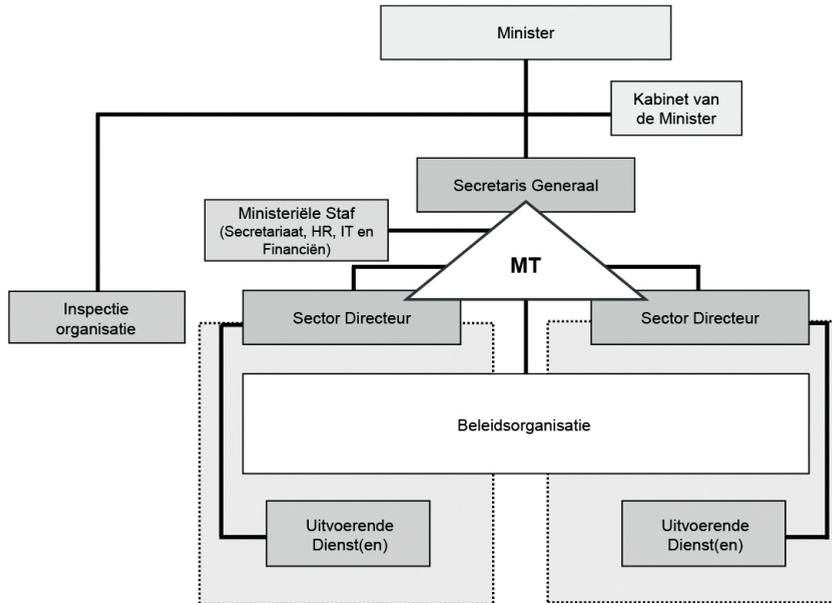
Ministerial mainstructure (Ministeriële hoofdstructuur)



Annex 2

Source: Nota 'Uitwerking van de nieuwe ambtelijke en bestuurlijke organisatie van het Land Curaçao' (Eindnota NBO Land Curaçao), 12 March 2009

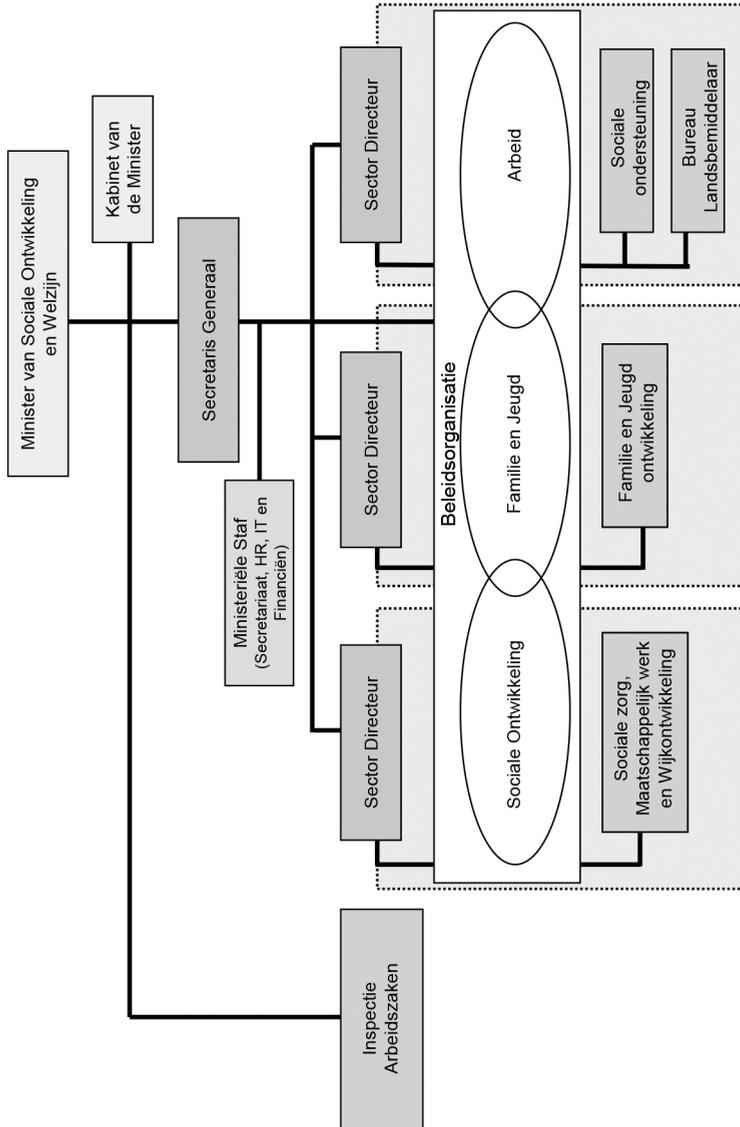
The Management structure of a Ministry



Annex 3

Source: Nota 'Uitwerking van de nieuwe ambtelijke en bestuurlijke organisatie van het Land Curaçao' (Eindnota NBO Land Curaçao), 12 March 2009

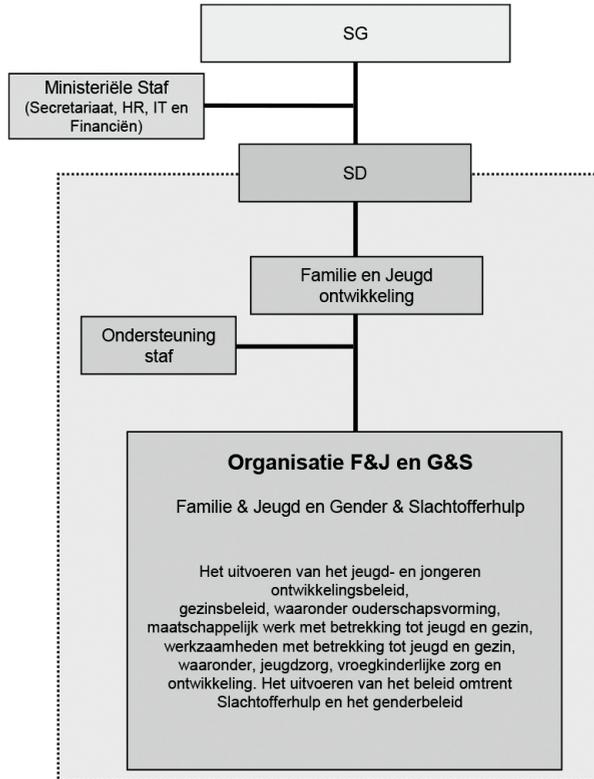
The structure of the Ministry of Social Affairs, Labour and Welfare



Annex 4

Source: Nota 'Uitwerking van de nieuwe ambtelijke en bestuurlijke organisatie van het Land Curaçao' (Eindnota NBO Land Curaçao), 12 March 2009

Structure Sector Family and Youth

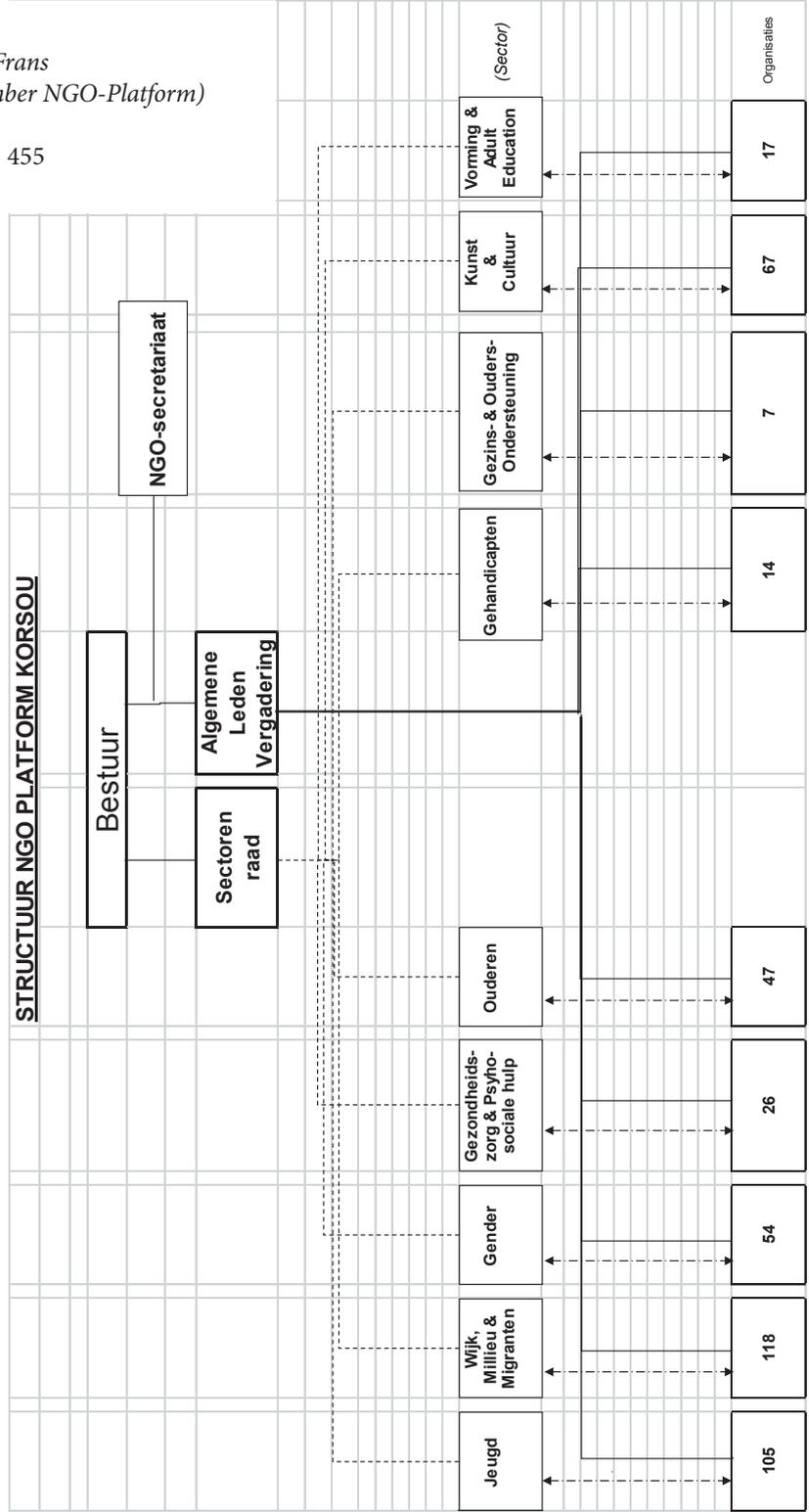


Annex 5

Source: D. Schoop-Frans
(former Board member NGO-Platform)

Totaal organisaties: 455

- Organisatie: CBO, NGO en Koepels
- NGO's: de individuele stichtingen of verenigingen
- Koepels: federaties van instellingen met min of meer dezelfde doelstellingen
- Sector: groeperingen van instellingen met min of meer dezelfde doelstellingen, kan zijn een zorggebied, een doelgroep, of een werkt terrein
- Sectorenraad: adviesorgaan bestaande uit 3 vertegenwoordigers van elke sector
- Bestuur: het gekozen bestuur van het platform door de Algemene Ledenvergadering
- Secretariaat: ondersteund kantoor van het platform



Annex 6

Source: *The Directorate of Foreign Relations (DBB) of Curaçao*

Local Actionplan for compilation State-report

6e CEDAW Rapportage

1. General (DBB)

- leiding (OCW)

Opzet 6e rapportage.

Aanbevelingen comite naar aanleiding 5e rapportage

- Indeling van het Koninkrijk (BZK)
- Nieuw mensenrechteninstituut (BZK en OCW)

2. Nederlands emancipatiebeleid (SOAW: Emancipatiebeleid/genderbeleid?)

- Emancipatiebeleid Rutte II (OCW)
- Emancipatie infrastructuur (OCW)
- Korte schets Emancipatiebeleid Rutte I (OCW)
- Korte schets Emancipatiebeleid Balkenende IV/V (OCW)
- Emancipatie infrastructuur (OCW)

3. Stand van zaken per artikel

- Artikel 1 en 2: Preventing and combating discrimination and violence against women (BZK/V&J/OCW) (iedereen)
 - Inleiding en stand van zaken
 - Beleid
 - Cijfers
 - Positieve aspecten
 - BES
- Artikel 3: Advancement in all fields: particular political, social, economic and cultural fields (OCW) (iedereen)
- Artikel 4: (Special) Measures for the equality of women and men (OCW) (SOAW en WJZ)
- Artikel 5: Changing socio-cultural behaviour patters, eliminating prejudices and family education (OCW) (SOAW en OWCS)
- Artikel 6: Combating women trafficking and the exploitation of prostitution (V&J) (Just, PG, SOAW, WJZ)
- Artikel 7: Political and public life (BZK) (BDP)
- Artikel 8: Government representation at international level (BZ) (DBB)
- Artikel 9: of obtaining, changing or retaining a nationality (V&J) (Justitie, SOAW, WJZ)
- Artikel 10: Equal rights in education (OCW) (OWCS)
- Artikel 11: Equal rights with respect to labour (SZW) (SOAW, SvB)
- Artikel 12: Right to healthcare and special measures during pregnancy (VWS/SZW) (GMN, SvB, SOAB)
- Artikel 13: Equal rights in Economic and social life (SZW) (SOAW, OWCS, WJZ)
- Artikel 14: Women in rural areas (EL&I, OCW) (-)
- Artikel 15: Equality before the law (BZK) (Just, SOAW, WJZ)
- Artikel 16: Equality in marriage and family relations (BZK/V&J) (SOAW, WJZ)

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- Judgments of 9 October 1979, Appl. no. 6289/73, and 6 February 1981 (*Airey case*).
- Judgment of 23 October 1985, Appl. no. 8848/80 (*Bentham v the Netherlands*).
- Judgment of 6 April 2000, Appl. no. 34369/97 (*Thlimmenos case*).
- Judgment of 30 November 2000, Appl. no. 15919 (*Edoardo Palumbo case*).
- Judgment of 1 February 2000, Appl. no. 34406/97 (*Mazurek v France*).
- Judgment of 27 April 2000, Appl. no. 42973/98 (*Bijleveld v The Netherlands*).
- Judgment of 11 October 2001, NJ 2002, no. 417 (*Sahin v Germany I*).
- Judgment of 5 November 2002, Appl. no. 33711/96 (*Yousef v The Netherlands*).
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- Judgment of 22 January 2008, Appl. no. 43546, (*EB v France*).
- Judgment of 9 September 2009, Appl. no. 33401/02 (*Opuz v Turkey*).
- Judgment of 10 July 2012, Appl. no. 58369/10 (*SGP v the Netherlands*).

d. Court of Justice of European Communities/ Union (CJEC):

- Judgment of 13 May 1986, case 170/84 (*Bilka-kaufhaus GmbH v Weber von Hartz*).
- Judgment of 11 November 1997, case C-409/95 (*Marschall v Land Nordrhein-Westfalen*).
- Judgment of 17 October 1995, case C-450/93 (*Kalanke v Glißmann*).

e. Supreme Court (Hoge Raad (HR)) of the Netherlands:

- HR 13 January 1879, no. 4330 (*Meerenberg*).
- HR 3 March 1919, NJ 1919, no. 371 (*Grenstractaat Aken*).
- HR 4 March 1952, NJ 1952, no. 365 (*Emmense baliekluyvers*).
- HR 6 March 1959, NJ 1962, no. 2 (*Nyugat*).
- HR 24 January 1696, NJ 1989, no. 207 (*Harmonisatiewet*).
- HR 27 November 1981, NJ 1982, no. 503 (*Boon v van Loon*).
- HR 21 March 1986, NJ 1986, no. 585.
- HR 30 May 1986, NJ 1986, no. 688 (*Spoorwegstaking*).
- HR 23 September 1988, NJ 1989, no. 740 (*Beukema-van Veen*).
- HR 10 November 1989, NJ 1989, no. 450.
- HR 27 November 1981, NJ 1982, no. 503 (*Boon v van Loon*).
- HR 7 May 1993, NJ 1995, no. 259, m. nt. E A Alkema (*Mathilda c.s. v Roman Catholic Central School Board (RKCS) & EG Curaçao*).
- HR 17 September 1993, NJ 1994, no. 373.
- HR 6 December 1996, NJ 1997, no. 189 (*Duurzame ontwrichting*).
- HR 13 February 1998, NJ 1998, no. 57.

- HR 9 July 1999, in; TAR-Justicia 2000, no. 1, pp. 42-45 (*Papiamentu als instructietaal in het onderwijs*).
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- HR 13 July 2001, ECLI:NL:HR:2001:ZC3603.
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- HR 25 March 2005, NJ 2005, no. 313.
- HR 25 April 2008, LJN: BC5901 (*Zwitserse verhuizing*).
- HR 8 March 2008, LJN: BC 2255 (*Gezamenlijk gezag na echtscheiding II*).
- HR 10 October 2009, ECLI:NL:HR: 2009:BJ0655.
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- HR 9 July 2010, LJN: BM4301 (*Omgang en gezag*).
- HR 9 April 2010, ECLI:NL:HR:BK4549 (*De Staat der Nederlanden (Ministerie van Binnenlandse zaken en Koninkrijksrelaties) en de Vereniging SGP v Stichting Proefprocessenfonds Clara Wichmann c.s.*).
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- HR 8 April 2011, LJN: BQ0479 (*Onderhoudsactie verwekker*).
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- GHvJ of the Netherlands Antilles of 15 April 1980, in: TAR 1981, no. 1, pp. 397-399 (*ALM v V*)
- GHvJ 14 December 1982, no. 253, in: TAR 1983, no. 1, pp. 30-34 (*Burnet v Jacoba*).
- GHvJ of 9 September 1986, in: TAR-Justicia 1988, no. 3, pp. 134-141, m.nt. R.S.J.M. (*Perdomo v de Nederlandse Antillen*).
- GHvJ of 22 November 1988, ECLI:NL:OGHNAA:1988:AD0510, NJ 1989, no. 566 (*Djaoen v Leito*).
- GHvJ of 4 September 1990, in: TAR-Justicia 1991, no. 1, pp. 28-30 (*Antonia & Paulina v Eilandgebied Curaçao*).
- GHvJ of 22 September 1987, in: TAR-Justicia 1988, no. 3, pp. 119-122.
- GHvJ of 28 June 1994, NJ 1995, no. 135.
- GHvJ of 29 November 2004, ECLI:NL:OGHNAA:2004:BF7112
- GHvJ of 28 October 2005, AR 148/00 – H.105/01.
- GHvJ of 20 February 2007, EJ 112/06 – HAR 229/06.
- GHvJ of 20 November 2007, EJ 3486/06 – H.129/07.
- GHvJ of 26 August 2008, LJN: BF0059.
- GHvJ of 4 November 2008, LJN: BH6217.
- GHvJ of 6 January 2009, LJN: BH0540.
- GHvJ of 10 February 2009, LJN: BH8742.
- GHvJ of 12 May 2009, LJN: B14776.
- GHvJ of 16 June 2009, LJN: B6235.
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- GHvJ of 22 juni 2010, ECLI: NL:OGHNAA:2010: BM9524.
- GHvJ of 10 August 2010, LJN: BN5656.
- GHvJ of 22 February 2011, LJN: BQ0635.
- GHvJ of 6 September 2011, LJN: BT7587.
- GHvJ of 16 August 2011, LJN: BT 2480.
- GHvJ 8 May 2012, LJN:BW8379 (*Fundashon Kresh Montagne*).

- g. *The Court in First Instance (Gerecht in Eerste Aanleg (GEA)) of the Netherlands Antilles/ Aruba:*
- GEA of the Netherlands Antilles (Aruba) of 5 November 1980, in: TAR 1981, no. 1, pp. 171-174.
 - GEA of the Netherlands Antilles (Curaçao) of 11 May 1987, in: TAR-Justicia 1987, no. 4, pp. 196-198 (*Djaoen v Leito*).
 - GEA of the Netherlands Antilles (Curaçao) of 9 May 1988, in: TAR-Justicia 1988, no. 3, pp. 127-130 (*Weverink v RKCS*).
 - GEA of the Netherlands Antilles (Curaçao) of 29 July 1999, TAR-Justicia 2000, no. 1, pp. 46-48.
 - GEA of the Netherlands Antilles (Curaçao) of 12 November 2007, LJN: BK 1803.
 - Decision of 8 October 2013, Ghis 62228 – EJ 2/13 – H 155/13, (*B. v S.*) (unpublished).
- h. *Civil Service Tribunal of the Netherlands Antilles:*
- Gerecht in Ambtenarenzaken in de Nederlandse Antillen (Aruba) of 25 February 1980, in: Justicia 1981, pp. 122-124 (*Yarzagaray v Aruba*).
 - Gerecht in Ambtenarenzaken in de Nederlandse Antillen of 30 August 1984, in: TAR 1984, no. 1, pp. 231-234 (*Het Bestuurscollege van het EG. Sint Eustatius v Shaw I*).
 - Gerecht in Ambtenarenzaken in de Nederlandse Antillen of 20 December 1984, in: TAR 1985, no. 2, pp. 140-146 m.nt. Alkema and m.nt. R.S.J.M. (*Het Bestuurscollege van het EG. Sint Eustatius v Shaw II*).
 - Gerecht in Ambtenarenzaken in de Nederlandse Antillen of 5 May 1988, in: TAR-Justicia, no. 3, 1988, pp. 122-127.
- i. *Council of Appeal of Civil Service of the Netherlands Antilles:*
- Raad van Beroep in Ambtenarenzaken of 20 September 2007, ECLI:NL:ORBANAA:2007:BK2997.
 - Raad van Beroep in Ambtenarenzaken of 17 March 2009, ECLI:NL:ORBANAA:2009:BJ6641.
- j. *Courts of Appeal of the Netherlands:*
- Centrale Raad van Beroep of 7 December 1988, in: Brölmann e.a. (eds.) 2008, pp. 847-852 (*Het bestuur der Sociale Verzekeringsbank v M.M.G van S. te G.*).
 - Gerechtshof 's-Gravenhage of 20 December 2007, ECLI:NL:GHSGR:2007:BC0619 (*De Staat der Nederlanden (Ministerie van Binnenlandse zaken en Koninkrijksrelatie & Vereniging SGP v Stichting Proefprocessenfonds Clara Wichmann c.s.)*).
 - Gerechtshof 's-Gravenhage of 20 February 2008, LJN: BC6649 (*H. v Erven W 2*).
- k. *Courts of First Instance of the Netherlands:*
- Rechtbank 's-Gravenhage of 7 September 2005, ECLI:NL:RBSGR:2005:AU2088 (*Stichting Proefprocessenfonds Clara Wichman c.s. v De Staat der Nederlanden (Ministerie van Binnenlandse zaken)*).
- l. *Administrative Jurisdiction Division of the Council of State:*
- Afdeling Bestuursrechtspraak Raad van State of 5 December 2007, ECLI:NL:RvS:2007:BB9493 (*SGP v de Minister van Binnenlandse zaken en Koninkrijksrelaties*).
- m. *Constitutional Court of Sint Martin:*
- CC SXM, Decision of 8 November 2013, in the case 2013/1.

LEGISLATION [translation by AR]

The Kingdom

- The Charter of the Kingdom of 28 October 1954, *Stb. 1954, no. 503*, as recently adapted by the Kingdom's act of 7 September 2010, *Stb. 2010, no. 333; P.B. 2010, no. 72* (Het Statuut voor het Koninkrijk der Nederlanden van 1954).

- The Proclamation of 29 December 1954 of the establishment of the new constellation of the Kingdom, *Stb. 1954, no. 596; P.B. 1954, no. 121*, (Proclamatie van de plechtige afkondiging van de nieuwe rechtsorde van het Koninkrijk, zoals vervat in het Statuut voor het Koninkrijk).
 - Kingdom's Act on the Dutch nationality of 19 December 1984, *Stb. 1984, no. 628*, recently adapted by Kingdom's Acts of 17 June 2010, *Stb. 2010, no. 242*, in that of 7 July 2010, *Stb. 2010, no. 339* (Rijkswet op het Nederlandschap).
 - Kingdom's Act Approval of Women's Convention of 3 July 1991, *Stb. 1991, no. 355* (Rijkswet goedkeuring VN-Vrouwenverdrag).
 - Kingdom Act Approval and Publication Treaties of 7 July 1994, *Stb. 1994, no. 542*, as recently adapted by the Kingdom's act of 7 July 2010, *Stb. 2010, no. 339* (Rijkswet Goedkeuring en Bekendmaking Verdragen).
 - Kingdom's Act on the adaptation of Kingdom's regulations related to the creation of the new countries of 7 July 2010, *Stb. 2010, no. 339; P.B. 2010, no. 55; P.B. 2010, no. 63* (Rijkswet aanpassing rijkswetten aan de oprichting van de nieuwe landen).
 - Kingdom's Act on the adaptation of the Charter related to the dissolution of the Netherlands Antilles of 7 September 2010, *Stb. 2010, no. 333* (Rijkswet wijziging Statuut in verband met de opheffing van de Nederlandse Antillen).
 - Kingdom's Act on Cassation of Aruba, Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba of 20 Juli 1961, *Stb. 1961, no. 212; P.B. 1961, no. 142* as recently adapted by the Kingdom's act of 7 September 2010, *Stb. 2010, no. 339* (De Cassatieregeling).
 - Kingdom's Act on the Rule of procedures of the Governor of Curaçao of 7 July 2010, *Stb. 2010, no. 341* (Het Reglement voor de Gouverneur van Curaçao).
 - Kingdom's Act on the Dutch nationality of 19 December 1984, *Stb. 1984, no. 628*, as recently adapted by the Kingdom's act of 17 June 2010, *Stb. 2010, no. 242* in conjunction with the act of 7 July 2010, *Stb. 2010, no. 339* (Rijkswet op het Nederlandschap).
 - Kingdom's Act on the Financial Supervision on Curaçao and Sint Maarten of 7 July 2010, *Stb. 2010, no. 334* (Rijkswet financieel toezicht Curaçao en Sint Maarten).
 - Kingdom's Act on the Common Court of Justice of Aruba, Curaçao and Sint Maarten and the BES-islands of 7 July 2010, *Stb. 2010, no. 335* (Rijkswet Gemeenschappelijk Hof van Justitie).
 - Kingdom's Act on the Public Prosecution Service of 7 July 2010, *Stb. 2010, no. 336* (Rijkswet openbare ministeries van Curaçao, Sint Maarten en BES).
 - Kingdom's Act on the Police forces of Curaçao, Sint Maarten and the BES-islands of 7 July 2010, *Stb. 2010, no. 337* (Rijkswet politie van Curaçao, Sint Maarten en BES).
 - Kingdom's Act on the Council of law enforcement of 7 July 2010, *Stb. 2010, no. 338* (Rijkswet Raad voor de rechtshandhaving).
 - Kingdom's Decree of 13 July 2012 regarding the instruction to the Government of Curaçao to adapt its budget 2012 based on the norms under Article 15 the Kingdom's Act on Financial Supervision, *Stb. 2012, no. 338* (Besluit van 13 juli 2012, houdende het geven van een aanwijzing aan het Bestuur van Curaçao tot aanpassing van de begroting 2012, rekening houdend met de in het artikel 15 van de Rijkswet Financieel Toezicht Curaçao en Sint Maarten genoemde normen).
 - Kingdom's Decree of 2 November 2012 regarding the decision on the appeal of the Government of Curaçao on the Decree of 13 July 2012 (*Stb. 2012, no. 338*), *Stb. 2012, no. 535* (Besluit van 2 november 2012, op het beroep van de Raad van Ministers van Curaçao tegen het Besluit van 13 juli 2012, houdende het geven van een aanwijzing aan het Bestuur van Curaçao tot aanpassing van de begroting 2012, rekening houdend met de in het artikel 15 van de Rijkswet Financieel Toezicht Curaçao en Sint Maarten genoemde normen).
- Mutual Agreements based on Article 38 paragraph 1 Charter between the countries in the Kingdom**
- Cooperation Regulation of Netherlands Antilles and Aruba of 28 August 1985, *P.B. 1985, no. 88* (Samenwerkingsregeling Nederlandse Antillen en Aruba).
 - Cooperation Agreement uniform law of procedure Aruba, Curaçao and Sint Maarten of 27 September 2010, *Curaçaose Courant 2010, no. 35* (Samenwerkingsregeling eenvormig procesrecht Aruba, Curaçao en Sint Maarten).

- Mutual Agreement on the Cooperation between the countries in the Implementation of Treaties of 10 December 2010, *Stcr. 2010, no. 19006* (Onderlinge regeling inzake de samenwerking tussen de landen bij de implementatie van verdragen).
- Mutual Agreement on the Official Legislative Consultation on Kingdom's Affairs of 30 January 2013, *Stcr. 2013, no. 2376; P.B. 2013, no. 9* (Onderlinge regeling Ambtelijke Wetgevingsoverleg Koninkrijksrelaties).

Orders in Council for the Kingdom

- Order in Council for the Kingdom on the Cooperation agreement safeguarding plans of Action country tasks Curaçao and Sint Maarten 2010 of 24 juli 2010, *Stb. 2010, no. 344* (Samenwerkingsregeling waarborging plannen van aanpak landstaken Curaçao en Sint Maarten 2010).
- Order in Council for the Kingdom on the legal position Common Court of Justice of 27 September 2010, *Stb. 2010, no. 358* (Rijksbesluit rechtspositie Gemeenschappelijk Hof van Justitie).

The colony of Curaçao

- Publication of 7 June 1741, no. 150, in: *Schiltkamp & de Smidt (eds.) 1978*, pp. 218-219.
- Publication of 18 October 1748, no. 205, in: *Schiltkamp & de Smidt (eds.) 1978*, p. 262.
- Publication of 2 November 1789, no. 382, in: *Schiltkamp & de Smidt (eds.) 1978*, pp. 454-457
- Publication of 20 November 1795, no. 28, in: *Schiltkamp & de Smidt (eds.) 1978*, pp. 514-517.
- Publication of the law of 8 August 1862 on the abolition of slavery on the islands Curaçao, Bonaire, Aruba, Sint Eustatius, Saba & Sint Maarten (Ned. Part.), of 22 August 1862, *P.B. 1862, no. 15*.
- General Governmental Regulation of the colony of Curaçao of 31 May 1865, *Stb. 1865, no. 54; P.B. 1865, no. 18* (Regeringsreglement op het beleid van de regering in de kolonie Curaçao van 1865).
- Civil Code (Book 1) of Colony Curaçao of 1868, *P.B. 1868, no 16* (Annex) (Burgerlijk Wetboek (oud)).
- The General Provisions of legislation of Curaçao of 1868, *P.B. 1868, no. 16* (Annex) (Algemeene Bepalingen der Wetgeving van Curaçao).
- Publication of the Royal Decree on the enactment of the new legislation for colony Curaçao (including Civil Code of colony Curaçao (old)), of 4 September 1868, *P.B. 1868, no. 16* (Publicatie houdende Konings besluit van 4 september 1868 ter vaststelling der nieuwe wetgeving kolonie Curaçao).
- Ordinance of 10 February 1904 on adaptation of the Book 1 of the Civil Code of colony Curaçao (old) of 1868, *P.B. 1904, no. 4* (Verordening tot wijziging en aanvulling van de bepalingen in het BW omtrent de vaderlijke macht en de voogdij en daarmede samenhangende bepalingen).
- Decree of 7 November 1905 on the enactment of ordinance of 1904 (*P.B. 1904, no. 4*), *P.B. 1905, no. 41*.
- Decree of 28 June 1916 on the supplement of the Civil Code, *P.B. 1916, no. 27* (Het Besluit op de vaderschapsactie van 1916).
- The (colony) Curaçaoan Constitution of 19 October 1936, *P.B. 1936, no. 105* (De Curaçaoose Staatregeling van 1936).
- The Constitution of colony of Curaçao of 1948, *P.B. 1948, no. 71* (Beschikking van 5 Juli 1948, ter bekendmaking van het Koninklijk besluit van 25 mei 1948, houdende bekendmaking van de tekst der Wet op de Staatsinrichting van Curacao (De Curaçaoose Staatregeling van 1948)).
- The Interim-regulation for the Netherlands Antilles of 5 October 1950 and 3 February 1951, *Stb. 1950, no. K. 419, P.B. 1950, no. 110 & P.B. 1951, no. 27* (De Interim-regeling voor de Nederlandse Antillen van 1951).

The former Netherlands Antilles

- Constitution of the Netherlands Antilles, Kingdom's decree of 29 March 1955, *Stb. 1955, no. 136 or P.B. 1955, no. 32*, as adapted (Staatsregeling van de Nederlandse Antillen van 1955).
- National Ordinance of 8 December 1964 on legal and material rights and obligations of civil servants of the Netherlands Antilles and the Island territories, *P.B. 1964, no. 159* (Landsverordening Materieel Ambtenarenrecht van 1964).

- Decree of 12 February 1965 on the publication of the Kingdom's Act on the enactment of the terms in the Cassation Appeal of the Netherlands Antilles, *P.B. 1965, no. 19*; *Stb. 1965, no. 33* (Besluit vaststelling termijnen in de Cassatieregeling 1961).
- National Decree of 26 November 1970 on the installment of the Socio-Economic Council, *P.B. 1970, no. 136* as adapted (Landsbesluit h.a.m. regelende de instelling van de Sociaal-Economische Raad).
- National Ordinance of 31 May 1972 on the termination labor agreement (the Dismissal Act), *P.B. 1972, no. 111* (Landsverordening Beëidiging arbeidsovereenkomst).
- National Ordinance of 31 May 1972 on the Minimum wage, *P.B. 1972, no. 110* (Landsverordening Minimumloon).
- National ordinance of 7 May 1975 on the elimination of the incapacity of married woman, *P.B. 1975, no. 70* (Landsverordening Opheffing van de handelingsonbekwaamheid van de gehuwde vrouw).
- National Ordinance of 12 January 1979 of the University of the Netherlands Antilles, as adapted, *P.B. 1979, no. 27* (Landsverordening Universiteit van de Nederlandse Antillen).
- National Ordinance of 12 January 1979 on the secondary education, *P.B. 1979, no. 29*, as adapted (Landsverordening Voortgezet Onderwijs).
- National Ordinance of 11 February 1983 on the adaptation of the National ordinance on civil servants of 1964, *P.B. 1983, no. 22* (Landsverordening wijziging Landsverordening Materieel Ambtenarenrecht 1964).
- National Ordinance of 6 September 1985 on the adaptation of provisions of the Civil Code, *P.B. 1985, no. 117* (Landsverordening tot wijziging van het Burgerlijk Wetboek van de N.A. van 1985).
- National ordinance of 5 April 1988 on the adaptation of (Art. 480) the Civil Code, *P.B. 1988, no. 32* (Landsverordening tot wijziging van het Burgerlijk Wetboek van de N.A. van 1988).
- National Ordinance of 19 July 1991 on the Compulsory education, *P.B. 1991, no. 85*, as adapted (Leerplichtlandsverordening).
- National Decree of 16 December 1994 on the installment of the Ministries, no. 48, *P.B. 1994, no. 138* (Landsbesluit Instelling Ministeries).
- National Ordinance of 28 December 1994 on the adaptation of the National ordinances on Income and wages tax, *P.B. 1994, no. 142* (Landsverordening tot wijziging van de Landsverordening Inkomstenbelasting 1943 (P.B. 1956, no. 9) en de landsverordening op de Loonbelasting 1976 (P.B. 1975, no. 254)).
- National Ordinance of 24 March 1995 upholding adaptation of Book 1 of the Civil Code (old), *P.B. 1995, no. 63* (Landsverordening 'Chôler-curatele').
- National Ordinance of 26 April 1999 on the adaptation of the national ordinance on illness insurance and the Civil Code, *P.B. 1999, no. 69* (Landsverordening tot wijziging van de landsverordening Ziekteverzekering en het Burgerlijk Wetboek van de N.A.).
- National Ordinance of 27 July 2000 on the new rulings on workinghours and overtime (Labour regulation 2000), *P.B. 2000, no. 67* (Arbeidsregeling 2000).
- National Ordinance of 27 July 2000 on the liberalisation of the labor law, *P.B. 2000, no. 86* (Landsverordening Flexibilisering arbeidswetgeving 2000).
- National Decree of 19 January 2001 on the implementation of art. 1:244 Civil Code, *P.B. 2001, no. 14* (Landsbesluit Gezagregister).
- National Decree of 27 September 2001 on the installment of the Taskforce domestic violence, *P.B. 2001, no. 9* (Landsbesluit instelling Taskforce huiselijk geweld).
- National Ordinance of 28 February 2002 on Governmental Organisation, *P.B. 2001, no. 75* (Landsverordening Organisatie landsoverheid).
- National ordinance of 27 December 2000 on the enactment of Book 1 of the Civil Code of the Netherlands Antilles, *P.B. 2000, no. 178* (Landsverordening vaststelling van de tekst Boek 1 van het Burgerlijk Wetboek van de Nederlandse Antillen, c.q. Curaçao).
- National Ordinance of 12 January 2004 on the adaptation of the Criminal Code, *P.B. 2004, no. 13* (Landsverordening Strafbaarstelling van belaging).

- National Ordinance of 7 July 2005 on the Compulsory Youth Program, *P.B. 2005, no. 72*, as adapted (Landsverordening Sociale Vormingsplicht).
- National Decree of 21 Februari 2006 on the enactment of the National Ordinance on Compulsory Youth Program, *P.B. 2006, no. 26* (Landsbesluit inwerkingtreding Sociale Vormingsplicht).
- National Ordinance on official languages of 18 March 2007, *P.B. 2007, no. 20* (Landsverordening Officiële talen).
- National Ordinance adaptation of National Ordinance on the Compulsory education (1991) of 22 June 2007, *P.B. 2007, no. 43* (Landsverordening wijziging Leerplichtlandsverordening 1991).
- National Ordinance on 'Funderend Onderwijs' of 14 November 2008, *P.B. 2008, no. 84* (Landsverordening Funderend Onderwijs).
- National Ordinance on the acceptance by the Netherlands Antilles of the adaptation of the Charter by the State-General connected with the constitutional status of the islands of 24 August 2010, *P.B. 2010, no. 54* (Landsverordening houdende aanvaarding door de N.A. van het door de Staten-General op 6 juli 2010 aangenomen voorstel Rijkswet tot wijziging van het Statuur voor het Koninkrijk der Nederlanden in verband met de wijziging van de staatkundige hoedanigheid van de eilandgebieden van de Nederlandse Antillen).
- National Decree of 7 September 2010 on the publication of decree of 23 September 2010 regarding the enactment of Articles I and II Kingdom's Act on the adaptation of the Charter connected with the dissolution of the Netherlands Antilles, *P.B. 2010, no. 73* (Besluit van 27 september 2010 tot afkondiging van het besluit van 23 september 2010 tot vaststelling van het tijdstip van inwerkingtreding van de artikelen I en II van de Rijkswet wijziging Statuur in verband met de opheffing van de Nederlandse Antillen).

The Island territory of Curaçao

- Insular Regulation of the Netherlands Antilles of 3 March 1951, *Stb. 1951, no. 64; P.B.1951, no. 39* (De Eilandenregeling Nederlandse Antillen (ERNA)).
- Insular Act on social welfare of 30 August 1966, *A.B. 1966, no. 69* (Eilandsverordening houdende regeling omtrent de uitoefening van de maatschappelijke zorg).
- Insular decree on the execution of Article 8 'Regeling Maatschappelijke zorg Curaçao' of 23 April 1971, *A.B 1971, no. 11* (Eilandsbesluit, houdende maatregelen, van de 23ste april 1971 ter uitvoering van artikel 8 van de 'Regeling Maatschappelijke zorg Curaçao').
- Insular Ordinance on child day-care for children between 0-4 years old of 15 December 1997, *A.B. 1997, no. 98* (Eilandsverordening kinderopvang).
- Insular Ordinance of 7 June 2001 on the installment of an Ombudsperson for Curaçao, *A.B. 2001, no. 69* (Eilandsverordening instelling Ombudsfunctionaris voor het Eilandgebied Curaçao).
- Insular Ordinance of 23 November 2007 on the rulings regarding the granting of subsidy, *A.B. 2007, no. 104* (Subsidieverordening Curaçao 2007).
- Insular Ordinance of 22 December 2009 on welfare, *A.B. 2009, no. 135* (Eilandsverordening verlening bijstand Curaçao 2008).
- Insular Ordinance on the enactment of the draft national ordinances of country Curaçao of 4 September 2010, *A.B. 2010, no. 87* (Eilandsverordening tot vaststelling van diverse ontwerp-landsverordeningen ten behoeve van het Land Curaçao).

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- Mr R Doran (President ‘*Stichting Coördinatie Centrum*’) on 9 August 2012.
- Mrs G Archer (President CAFRA, chapter Curaçao), on 9 August 2012.
- Mrs D van der Veen (Collaborator Directorate of Foreign Relations of Curaçao), on 10 August 2012.
- Mrs M Warner (Coordinator of the Association for Responsible Planned Parenthood), on 10 August 2012.
- Mrs J Juliet-Pablo (former Director of the local Bureau of Women’s Affairs), on 13 August 2012.
- Mrs T Salsbach (Collaborator SIFMA), on 14 August 2012.
- Mrs G do Rego-Kuster (founder and former president of UMA), on 16 August 2012.
- Mrs A Kwidama (Manager ‘*Fundation Kas Popular*’), on 22 August 2012.
- Mrs A-S Albertoe (Foundation ‘*Bos di Hubentud*’), on 22 August 2012.
- Mr H Koeiman (Former Minister of Social Development, Labour and welfare 2010-2012), on 24 August 2012.
- Mrs D Schoop-Frans (Director of the Association for Responsible Planned Parenthood; former Boardmember NGO Platform), on 24 August 2012.
- Mrs J Henriquez (President ‘*Dedima*’), on 28 August 2012.
- Mrs S Oosterhof (co-founder and former president of the Steering Committee), on 30 August 2012.
- Mrs A Balentien (President Steering of the Committee 2012), on 31 August 2012.
- Mrs B Doran-Scoop (former Board-member of the Steering Committee Curacao), on 31 August 2012.
- Mrs P Jackson (legal advisor Women’s Development Center (SEDA) and Steering Committee Curaçao), on 5 September 2012.
- Mrs Y Bakhuis (Collaborator Minister of Social Development, Labour and welfare), on 14 September 2012.
- Mrs A Poulina-Bitorina (vice-president Foundation ‘*Muhenan Uniforma I Arma*’), on 28 September 2012.
- Mrs C Martha (President Foundation ‘*Muhenan Uniforma I Arma*’; boardmember CAFRA and Dedima), on 28 September 2012.
- Mrs L Peternella Pieter-Kwiers, (former Head of the local Bureau of Women’s Affairs and Humanitarian matter, co-founder and former president of the Steering Committee Curaçao, co-founder and former vice-president Board Women’s Development Center), on 29 November 2012.
- Mrs M Leetz-Cijntje, (vice-president Consultation organ Women’s Affairs, co-founder Steering Committee Curaçao, president Board Women’s Development Center (SEDA)), on 5 December 2012.

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- Mr K Carlo (former Director of the Department of Welfare, Family and Humanitarian Affairs and its successor the Directorate of Social Development), 13 September 2013.
- Mrs D Leer (President 'Stichting Slachtofferhulp' Curaçao), on 19 September 2013.
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- Mrs E Casimiri (Treasurer Steering Committee Curaçao 2013), on 24 September 2013.
- Mr A-M de Vries (President 'Stichting Maatschappelijk Zorg en Herstel'), on 24 September 2013.
- Mr K Concincion (Senior collaborator Office Ombudsperson/ Substitute Ombudsperson), on 25 September 2013.
- Mrs L Poppen (former collaborator local Bureau Women's Affairs), on 23 November 2013.
- Mrs M Russel-Capriles (former Member of Parliament 1994-1998), on 31 November 2013.
- Mrs M Liberia-Peters (former Prime Minister of the Netherlands Antilles), last on 3 December 2013.
- Mrs C Schorea (collaborator House of Culture), on 16 January 2014.
- Mrs M Racamy (collaborator of the Directorate of Foreign Affairs (DBB)), last on 11 April 2014.
- Mr A van der Hoeven, (former boardmember 'Sentro pa Desaroyo di Antiyas (SEDE Antiyas)'), on 17 April 2014.
- Mrs M Dennaoui-Simon (Public Prosecutor), last on 27 November 2014.*

* This is the only person I sustained interviews with after the period covered by this investigation. This was due to external factors.

Curriculum Vitae

Adaly Marie-Lou Rodriguez was born on 4 April 1974 in Curaçao. After finishing her secondary education at the Thorbecke College, in Almelo, the Netherlands, she started her legal studies at the University of Utrecht, the Netherlands, where she had lived since the late 1980s with her family after their migration there. She completed her legal studies at the former University of the Netherlands Antilles where she received her degree in Dutch-Antillean law in 2003. In the same year she was appointed by that institution as a member of the academic staff and as a junior researcher in the Faculty of Law, in the fields of constitutional, administrative and human rights law. She worked there until 2013.

She has been active as a board member in various local non-governmental organisations, such as '*Stichting Kinderbescherming*' and Amnesty International Chapter Curaçao, and as a supervisory board member of foundations such as '*Stichting Witgele Kruis Prinses Margriet*'. She is also the co-founder of the Dutch Caribbean Human Rights Committee. Alongside these activities, she acts as legal advisor to several companies and organisations. Since 2011 she has been a member of the supervisory board of the Common Court of Justice of the Caribbean countries and the BES-islands.

In 2015, Adaly started research on the political and legal system of Curaçao for her second PhD. She is specialising further in constitutional law and political science through the course of this PhD.

Colophon

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