



# Shadow Report for the 65<sup>th</sup> Session of the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW)

## 6<sup>th</sup> Periodic Review of the Kingdom of the Netherlands

### Discrimination of Lesbian, Bisexual, Transgender and Intersex persons in the Netherlands

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#### **Joint NGO submission by:**

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Transgender Netwerk Nederland - TNN

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# Contents

- Key words ..... 3
- Executive Summary ..... 3
- I. Introduction ..... 4
- II. Legal Gender Recognition (Articles 1, 2, 3 and 15)..... 5
- III. Combatting discrimination and stereotyping through education (Articles 2&10) ..... 6
- IV. Discrimination and exclusion in employment (Articles 2, 11 and 15)..... 8
- V. Equal access to healthcare (Article 12) ..... 9
- VI. Violence against LGBTI women (General Recommendations 12 and 19)..... 10
  - Hate crimes against LGBTI women ..... 10
  - Violence against and ill-treatment of intersex children ..... 11
  - Remedies for violations of the rights of intersex persons ..... 13
- VII. Summary of recommendations ..... 15
- Contact information ..... 16

## Key words

Bisexual, discrimination, education, employment, full consent, gender identity, gender recognition, gender registration, gender stereo-typing, hate crimes, healthcare, intersex, labour market, LGBTI, lesbian, physical integrity, rights of the child, self-determination, sex characteristics, sexual orientation, transgender, violence

## Executive Summary

Despite relatively good anti-discrimination standards in law, policies and practice there are still gaps to be filled in order to guarantee equality and non-discrimination of women based on sexual orientation, gender identity and sex characteristics. Under its international and domestic obligations, the Kingdom of the Netherlands is required to provide effective protection against discrimination of lesbian, bisexual, trans and intersex persons. The government should do more to legally guarantee protection against discrimination; act on ongoing laws and practices sustaining discrimination in gender recognition and self-determination; guarantee protection against discrimination of trans and intersex persons in the labour market and in healthcare; implement proper education curricula to combat discrimination and guarantee policies to protect LGBTI persons from violence and ill-treatment. This report offers clear recommendations to solve these issues.

## I. Introduction

1. This shadow report has been compiled on behalf of COC Nederland, Nederlands Netwerk voor Intersekse/DSD (NNID) and Transgender Netwerk Nederland (TNN). The report serves as a basis for dialogue with the State Party during the 65th Session of CEDAW in which the 6th Periodic Report (CEDAW/C/NLD/6) will be considered.
2. Every chapter of this report introduces specific problems of discrimination against women, provides the related and relevant articles of the Convention on the Elimination of All Forms of Discrimination Against Women, describes the steps taken by the government of the Kingdom of the Netherlands, and introduces suggestions for improvements and recommendations to the State Party.
3. COC Nederland, NNID and TNN have decided to compile this report in addition to the report submitted by the Dutch CEDAW Network, of which the three NGO's are part of. The three NGO's contributed to the compilation and endorsed the shadow report *Unfinished Business - Women's Rights in The Netherlands*. COC Nederland, NNID and TNN are of the opinion that certain forms of discrimination against women need specific attention. These forms are addressed in this report.
4. Despite relatively good anti-discrimination standards in law, policies and practice there are still gaps to be filled in order to guarantee equality and non-discrimination of women based on sexual orientation, gender identity and sex characteristics. Under its international and domestic obligations, the Kingdom of the Netherlands is required to provide effective protection against discrimination of lesbian, bisexual, trans and intersex persons. The government needs to legally guarantee protection against discrimination; act on ongoing laws and practices sustaining discrimination in gender recognition and self-determination; create legal protection against discrimination of trans and intersex persons in the labour market; and, implement proper education curricula to combat discrimination.

## II. Legal Gender Recognition (Articles 1, 2, 3 and 15)

5. The assigned gender at birth is proven to be an obstacle for trans and intersex persons at school, in contact with local authorities, medical providers and in every environment where identification is requested. It leads to forms of discrimination and directly impacts the life of trans and intersex persons. The lack of access to legal gender recognition goes beyond being an administrative act: it is essential in order for many trans and intersex people to be able to participate in society and live a life of dignity and respect.
6. The ability to obtain legal recognition of one's gender identity is an important aspect of the right to privacy and to equal recognition and protection before the law. Failure to recognize the gender identity of transgender and intersex women is a breach of Articles 1, 2, 3 and 15 of CEDAW.
7. Over the past years, the government has taken steps to tackle this form of discrimination. In its sixth report, the government rightfully notes in paragraph 185 that the Gender Identity Recognition Act (*Wet erkenning genderidentiteit*, 18 December 2013, Bulletin of Acts and Decrees 2014-1) has removed from law the sterilization requirement and the requirement of physical adaptation to the desired gender in connection with sex registration. Anyone aged 16 or over may request a Registrar of Births, Deaths, Marriages and Registered Partnerships to change the sex on their birth certificate.
8. However, the government also acknowledges that this can only be done, provided one can submit an expert statement in support of a request.
9. The NGO's hold that the by law prescribed expert statement is in contradiction with articles 1, 2, 3 and 15 of CEDAW. The right to determine ones' gender is not fully respected and amounts to discrimination in law, practice and policy. Intersex persons still need a judicial approval and transgender persons aged 16 and older need an expert letter from a doctor or psychologist to get access to legal gender recognition. The expert letter as well as the lawsuit both create a financial barrier for recognition before the law. Transgender and intersex persons under the age of 16 have no access to legal gender recognition.
10. The binary model male-female in the gender recognition law is still paramount. In paragraph 13 (p10) of the State Report the government notes that in the Netherlands "[t]he notion of the gender binary is gradually losing ground, so that the position of transgender people in society is improving. Gender is no longer experienced as either male or female, but increasingly as a spectrum with male and female at either extreme, and numerous variations in between. The new transgender legislation [...] reflect[s] these new attitudes to gender."
11. In the recording and assignment of gender at birth, the Dutch government is still not taking into account that a person's gender identity can be incongruent with the assigned gender from an early age and that sex characteristics do not have to follow the binary model male-female. Furthermore, the Dutch legal gender recognition procedures only provide the options of choosing between 'male' and 'female', leaving out non-binary trans and intersex people.

12. At the moment, the Netherlands is investigating the possibility to limit gender registration and its dissemination by public authorities. We urge the Dutch government (in case recording gender is for some purposes still necessary) to guarantee that the gender recognition reflects binary and non-binary options, is easy to change, is separated from personal records and only recorded when individuals consent.

**Recommendations:**

- a) Guarantee access to legal gender recognition for both intersex and transgender children and adults, without obstacles infringing the individual's right to self-determination (i.e. expert letter or lawsuit) and financial barriers
- b) Enable every individual to alter the gender as registered at the civil registry to undetermined or unregistered
- c) Enable parents of a new-born not to assign a gender at birth, to guarantee self-determination of the child at a later age
- d) Remove gender markers from ID documents

### III. Combatting discrimination and stereotyping through education (Articles 2&10)

13. Discrimination of lesbian, bisexual, trans and intersex persons still persists in the Netherlands and has a great impact on everyday life of LGBTI youth. 51 Percent of openly lesbian and bisexual youth in the Netherlands have experienced discrimination because of their identity in the last 12 months. Suicide rates among LBT youth in The Netherlands are almost five times higher than average (9 percent of LBT youth has attempted suicide as compared to 2 percent of heterosexual youth) and research shows a causality between the discrimination that LBT-youth experience and these high suicide rates.<sup>1</sup>

14. Article 2 (CEDAW) stipulates that States Parties agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women. Article 10(c) (CEDAW) requires The Netherlands to take all appropriate measures to eliminate “any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods”. These stereotyped concepts may involve stereotypes about the sexual orientation, gender identity/expression or intersex status of women, grounded in heteronormative assumptions.

15. In the State Party report paragraph 103 (p34) the government notes that with “the adjustments to the attainment targets for primary education, special education and secondary education, sexuality and sexual diversity became compulsory items on school curriculums as of 1 December 2012 (or

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<sup>1</sup> Jongeren en seksuele oriëntatie. Sociaal en Cultureel Planbureau, January 2015. Commissioned by the Dutch government.



1 August 2013 in the case of special secondary education). The new attainment targets now contain a section requiring children to be taught how to deal respectfully with sexuality and diversity, including sexual diversity, within society. The new targets give schools scope to devote attention to girls' and boys' sexual development.”

16. Research shows that the adjustments to the attainment targets are not being implemented properly; adherence to articles 2 and 10(c) (CEDAW) is still deficient. Though most school staff say they find the issue important and that they do give it (some) attention in school<sup>2</sup>, only a quarter of the Dutch high school students indicate that there were proper lessons on acceptance of LGBT at their school. Four out of ten high school students (38%) indicate that the subject acceptance of LGBT has never been addressed in any way at their school. The same number of students indicated that the issues had been raised only very briefly. A mere 13% of students is very satisfied about the manner in which LGBT acceptance is discussed in school.<sup>3</sup> These number clearly show the need to implement the law properly and to take additional steps to combat discrimination of lesbian, bisexual, trans and intersex persons in education.
17. The government should make education on sexual orientation, gender identity and sex characteristics a compulsory topic in the curriculum of teacher academies. If teachers do not learn how to combat discrimination of LGBTI in schools during their own education, it is to be expected that the (obligatory) education on LGBTI that they give in schools will remain absent or low in quality and that discrimination against LGBTI will not decrease. A study commissioned by the Dutch Ministry of Education, Culture and Science (OCW) illustrates the lack of attention in teacher academies for combatting LGBTI discrimination<sup>4</sup>. The clear conclusion of the study is that teacher academies in The Netherlands give ‘almost no’ attention to the subject of how to combat discrimination of LGBTI in schools. The report also states that attention for the subject in the formal curriculum of teacher academies is insufficient and not specific enough.
18. In addition to the needed proper implementation of the law and improvement of education on tolerance and non-discrimination, there is a pressing need to include education on intersex into the curriculum of teacher academies as lack of awareness and knowledge about intersex creates exclusion and discrimination of intersex persons.

### **Recommendation:**

- e) Include promotion of tolerance and non-discrimination of LGBTI in the curriculum of all teacher academies

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<sup>2</sup> Omgaan met seksualiteit en seksuele diversiteit. Inspectie van het Onderwijs, June 2016. Commissioned by the Dutch government.

<sup>3</sup> EenVandaag, 2016: <http://www.eenvandaag.nl/uploads/doc/Rapport%20homolessen.pdf>

<sup>4</sup> Aandacht voor sociale veiligheid op pabo's en tweedegraads lerarenopleidingen; Onderzoek uitgevoerd in opdracht van het Ministerie van OCW. Stichting School en Veiligheid Utrecht, November 2014.

## IV. Discrimination and exclusion in employment (Articles 2, 11 and 15)

19. Transgender persons still face discrimination and related problems in employment and the labour market. Even though transgender persons on average received a higher education in comparison with the general population, more than 20% is unemployed or unable to work. Many live around or under the poverty line.<sup>5</sup>
20. Article 2 (CEDAW) stipulates that States Parties agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and (2a) to embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle. Article 11(1) of CEDAW guarantees women an equal right to work and equality in conditions and treatment at work, on the same basis as men This creates a requirement for the Netherlands to address intersectional employment discrimination experienced by LGBTI women.
21. The NGO's are commending the government for the intention to focus on rigorous promotion of the interests of transgender persons and to launch programmes to empower transgender persons, and to provide them with employment counselling. We encourage the government to develop similar programs for intersex persons.
22. A lack of adequate legal protections against discrimination for transgender and intersex people in the labour market remains however. The Minister of Interior has indicated to parliament it is looking in to adapting the Equal Treatment Act (Algemene wet gelijke behandeling (Awgb)) and anti-discrimination provisions to explicitly include discrimination against transgender persons. It is still uncertain if intersex will be included in such legal provisions, but highly necessary that it will be. The Netherlands has yet to implement such a specification of the law.

### **Recommendation:**

- f) Adapt Equal Treatment Act (Awgb) to include explicit prohibition of discrimination of trans and intersex people

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<sup>5</sup> SCP, Worden wie je bent, 2012

## V. Equal access to healthcare (Article 12)

23. Article 12(1) of CEDAW provides that appropriate measures must be taken to eliminate discrimination against women in the field of healthcare in order to ensure access to health care services.
24. In the Netherlands there are three centres of expertise that provide medical gender affirmative healthcare. The waiting list for access to medical gender affirmative health care is long. Around 50% of people seeking gender affirmative health care has to wait for 6 months. Specific research shows that the long waiting lists contribute to several social problems and resulting in drugs and alcohol abuse and self-medication with hormones.<sup>6</sup>
25. Not all treatments necessary to complete the transition to male or female are covered or are only partially covered by the basic health insurance (i.e. breast reconstruction). In its concluding observations in 2010 the Committee invited the Netherlands to reconsider its position to not reimburse transgender women for breast implants.<sup>7</sup> Knowledge about gender affirmative health care needs is not accessible for primary health care providers despite their wishes to help transgender patients' basic needs (i.e. prescriptions and routine blood tests). Both result in unequal access to necessary affirmative healthcare and exacerbates social problems and resulting in drugs and alcohol abuse. The NGO's would like to stress that CEDAW, the Dutch Human Rights Commission and the Human Rights Commissioner of the Council of Europe<sup>8</sup> have all stressed the importance of the accessibility of these necessary medical treatments for transgender persons and that they should be reimbursed by public health insurance schemes.
26. Recent research shows that the largest gender affirmative healthcare centre treats patients according to protocols which prescribe a standard path of therapies and surgeries, presumed to be applicable to all patients. In practice, not all transgender patients wish to receive this standard treatment for several reasons. Some wish only certain therapies or surgeries, but are forced to agree to the standard treatment. If they do not agree to this, they cannot receive any treatment. The standard treatment that they do receive may include a hormonal prescription with a higher dosage than wished and even unwanted surgeries.<sup>9</sup> Patients that do not fit in the binary views about gender of those health care providers are being held to a higher degree of scrutiny before they get access to gender affirmative health care treatments. The government should ensure that no child or adult is subjected to unnecessary surgery or treatment without free and fully informed consent, including for persons seeking gender affirmative healthcare.
27. Pathologization of trans and intersex people is still widespread. This has severe consequences for the well-being of both children and grown-ups as they are regularly being confronted with the idea that they are suffering from mental and psychological issues. One important step to depathologize transgender people's

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<sup>6</sup> E.M. van den Boom, *Onderzoek transgenderzorg Nederland*. Amsterdam: Stichting Transvisie, 2016

<sup>7</sup> CEDAW/C/NLD/CO/5, paragraph 47, p. 12

<sup>8</sup> For example: Human Rights and Gender Identity. Commissioner for Human Rights, Council of Europe, 2009, p.18.

<sup>9</sup> E.M. van den Boom, *Onderzoek transgenderzorg Nederland*. Amsterdam: Stichting Transvisie, 2016, p. 17.

gender affirmative health care, is to abolish the diagnosis genderdysphoria for prepubertal children since they do not need medical treatments yet.

**Recommendations:**

- g) Guarantee equal access to basic gender affirmative health care through primary health care providers and reimbursement of all aspects of gender affirmative health care
- h) Abolish the diagnosis genderdysphoria for prepubertal children and implement further mechanisms to depathologize transgender people's gender affirmative health care needs
- i) Implement effective legislative, administrative, judicial and other measures to ensure that no child or adult is subjected to unnecessary surgery or treatment without free and fully informed consent

## VI. Violence against LGBTI women (General Recommendations 12 and 19)

28. The NGO's recall that according to CEDAW General Recommendation 19, gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men. In General Recommendation 12, the Committee asked for States to include in their reports information on violence and on measures introduced to deal with it.
29. The State Party acknowledges the importance of General Recommendation 12 and 19. In paragraph 75 (p27) of the State Report the government notes that "violence against women is a serious, often invisible problem in society. Because it is a priority, the Netherlands wishes to state that it attaches great importance to general recommendations no 12 and 19 in which the Committee explicitly refers to violence against women." The State Report describes the policies that the government is pursuing to tackle domestic violence, human trafficking and abuses in the sex industry. It does not however, address hate crimes and violence against and ill-treatment of trans and intersex persons.

### Hate crimes against LGBTI women

30. Many lesbian women, bisexual-, transgender- and intersex persons (LBTI) in the Netherlands encounter hate crimes, but only in very few cases this results in prosecution and/or conviction of the perpetrators.
31. About seven in ten LGBTI persons in The Netherlands experience discriminatory physical or verbal violence because of their identity.<sup>10</sup> Specific research among transgender persons in the Netherlands shows that 43 percent experienced violence in the last 12 months<sup>11</sup>. Thus, more than seven hundred thousand LGBTI people in the Netherlands experience violence related to their identity.<sup>12</sup> In 2014 1403

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<sup>10</sup> Geweld tegen homoseksuele mannen en lesbische vrouwen. WODC/Movisie, 2009. Commissioned by the Dutch government.

<sup>11</sup> Veilig, zolang men het niet merkt... Transgender Netwerk Nederland, October 2015, p. 3.

<sup>12</sup> Using a conservative estimate that about 6 percent of the Dutch population of 17 million is LGBTI.

cases of hate crimes were reported to the police, up from 380 in 2008.<sup>13</sup> According to the police this increase in reported cases is likely to be caused both by an actual increase of violence against LGBTI as well as by more people reporting.<sup>14</sup> In 2013 a total of 88 cases of (all kinds of) discrimination were prosecuted by the public prosecutor, resulting in 64 convictions. Of those about 14 percent was for discrimination on grounds of sexual orientation or identity.<sup>15</sup> Thus, whereas hundreds of thousands LGBTI persons in the Netherlands experience hate crimes and discrimination, only about 10 perpetrators are convicted each year.

32. The Dutch government should do everything in its power to optimize law, policy and practice so as to achieve lower hate crime rates and a higher percentage of perpetrators being prosecuted and convicted.
33. In its Security Agenda 2015-2018<sup>16</sup> the minister of Justice and Security has named the countering of ‘homophobic violence’ as one of its priorities. Unlike other priorities set in the Security Agenda, there is no specific action program to implement this priority and there are no indicators for success. We urge the Dutch government to draft an action program for countering hate crimes against LGBTI, including indicators for success. We call on the government to make an agreement with police and public prosecutor to increase the amount of perpetrators that are prosecuted for hate crimes against LGBTI.

#### **Recommendations:**

- j) Optimize law, policy and practice to lower hate crime rates and promote a higher percentage of perpetrators being prosecuted and convicted
- k) Issue an action program for countering hate crime against LGBTI, including indicators for success
- l) Make an agreement with police and public prosecutor to increase the number of perpetrators that are prosecuted for hate crimes against LGBTI

#### **Violence against and ill-treatment of intersex children**

34. Health care for intersex children in the Netherlands is based on ‘*predict and control*’: when an intersex child is born, health professionals try to predict the future gender of the child and control the outcome of this prediction by means of medically unnecessary and irreversible surgery, treatment with hormones, other normalizing treatments and psychological support, without the free and fully informed consent of the child. This is confirmed by health professionals in medical journals<sup>17</sup>, information for general

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<sup>13</sup> Discriminatiecijfers politie 2014, Verwey-Jonker Instituut, 2014. Commissioned by the Dutch government.

<sup>14</sup> POLDIS rapportage 2012, p. 11. Verwey-Jonker Instituut 2013. Commissioned by the Dutch government.

<sup>15</sup> Parliamentary parliament document 30 950, 75, appendix p.3

<sup>16</sup> Veiligheidsagenda 2015-2018, p.11.

<sup>17</sup> Wolffenbuttel KP. Disorders of sex development: méér dan alleen een andere naam. Tijdschrift voor Urologie. 2015;5(1):8-12; Wolffenbuttel K, Feitz W, Dessens A, Lumen N, Hoebeke P. Genitale chirurgie bij jongens met disorders of sex development. Tijdschrift voor kindergeneeskunde. 2008;76(3):121-129; Wolffenbuttel K, Crouch NS. Timing of feminising surgery in disorders of sex development. Understanding Differences and Disorders of Sex Development (DSD). 27: Karger Publishers; 2014. p. 210-221

practitioners<sup>18</sup>, information for parents of new-borns<sup>19</sup> and a letter to the editor of a Dutch newspaper written by two doctors who regularly perform genital surgeries on intersex children<sup>20</sup>.

35. This predict and control method is a violation of the right of self-determination of the child and of the right to the highest attainable standard of physical and mental health. The term ‘predict’ is misleading, as it is very uncertain at the young age in which surgery is oftentimes conducted, how the identity of the child will develop in the future. The consequences can be severe: unnecessary surgery at young age often leads to lifelong physical and mental health issues due to the irreversible character. When children grow older and their identity becomes clear, they might be, as a consequence of the medical intervention, be confronted with a body that goes contrary to their identity. They will never be able to alter this.
36. Medical interventions on intersex children have proven negative consequences for the individual. Per example, health professionals often try to prevent virilisation of female fetuses with Congenital Adrenal Hyperplasia (CAH)<sup>21</sup>. There is only limited information available on the results of this type of medical intervention<sup>22</sup>. Studies show however, that 7 out of 8 children who were exposed to treatment had no recognizable benefit. The treatment does however have unfavourable influences on the development of cognitive functions<sup>23</sup>. Health professionals often believe that the sex assignment of children with Congenital adrenal hyperplasia (CAH) is not an issue<sup>24</sup>. Yet a recent study showed that 10 out of 39 (25.6%) children with CAH raised as girls, frequently (5.1%) or occasionally (20.5) wishes ‘to be the other sex’. Studies say five percent of persons with CAH question the assigned sex. It is impossible to predict which of the children will belong to the group that will reject the assigned sex. Therefore, the ‘normalizing treatment’ is a violation of all children with CAH. Parents may not realize that they are de facto opting for experimental treatment for their children<sup>25</sup>. This is a violation of CRPD art. 15 and CRC art. 24.1. The Dutch government perpetuates this situation, which clearly is in conflict with CRC art. 3.1

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<sup>18</sup> Claahsen-van der Grinten HL, Stikkelbroeck MML, Vulmsa T. Informatie voor de huisarts over Adrenogenitaal syndroom (AGS). In: van Breukelen CW, Goren SS, Oude Vrielink S, Woutersen-Koch H, van Veldhuizen E, redactie.: Bijnierverseniging NVACP, Vereniging Samenwerkende Ouder- en Patiëntenorganisaties (VSOP), Nederlands Huisartsen Genootschap (NHG); 2011.

<sup>19</sup> UMC St Radboud. Behandelteam meisjes met adrenogenitaal syndroom (AGS): Patiënteninformatie. Nijmegen, Nederland: UMC St Radboud; 2011.

<sup>20</sup> de Jong TPVM, Salvatore C. Achterhaalde misstanden. De Volkskrant. 6 juni 2015, Pagina 21 Sect. Opinie en Debat, Rubriek U.

<sup>21</sup> Claahsen-van der Grinten HL, Stikkelbroeck MML, Vulmsa T. Informatie voor de huisarts over Adrenogenitaal syndroom (AGS). In: van Breukelen CW, Goren SS, Oude Vrielink S, Woutersen-Koch H, van Veldhuizen E, redactie.: Bijnierverseniging NVACP, Vereniging Samenwerkende Ouder- en Patiëntenorganisaties (VSOP), Nederlands Huisartsen Genootschap (NHG); 2011. Claahsen-van der Grinten H, Stikkelbroeck N, Otten B, Hermus A. Congenital adrenal hyperplasia—Pharmacologic interventions from the prenatal phase to adulthood. *Pharmacology & therapeutics*. 2011;132(1):1-14.

<sup>22</sup> Dreger A, Feder EK, Tamar-Mattis A. Prenatal dexamethasone for congenital adrenal hyperplasia. *Journal of bioethical inquiry*. 2012;9(3):277-294.

<sup>23</sup> Wallensteen L, Zimmermann M, Sandberg MT, Gezelius A, Nordenström A, Tatja J, et al. Sex-dimorphic effects of prenatal treatment with dexamethasone. *Journal of Clinical Endocrinology & Metabolism*. 2016; Early release.

Maryniak A, Ginalska-Malinowska M, Bielawska A, Ondruch A. Cognitive and social function in girls with congenital adrenal hyperplasia—Influence of prenatally administered dexamethasone. *Child Neuropsychology*. 2014;20(1):60-70.

<sup>24</sup> E.g.: “For physicians it is obvious and unequivocal that a person with CAH and an XX karyotype has a female gender identity,” Binet A, Lardy H, Geslin D, Francois-Fiquet C, Poli-Merol ML. Should we question early feminizing genitoplasty for patients with congenital adrenal hyperplasia and XX karyotype? *Journal of Pediatric Surgery*. 2016;51(3):465-468.

<sup>25</sup> Liao L-M, Wood D, Creighton SM. Parental choice on normalising cosmetic genital surgery. *BMJ*. 2015;351.

and 24.3. b We therefore highly recommend the government to protect children against unproven and unscientific medical treatments.

37. We ask the government to recognize that the structural problem in the treatment of intersex children is connected to the desire of health professionals and parents to predict the future gender of the child and to control the outcome of this prediction (“predict & control”). At the same time, we invite the government to support the implementation of a system in which health professionals gather the information needed to take decisions regarding intersex when the child is old enough to provide free and fully informed consent (“measure & react”).
38. The ‘normalizing’ treatment of intersex people in the Netherlands in general is a breach of CEDAW art. 1, 5 and 12, General Recommendations 14, 19 and 31. It is also a breach of CRPD article 17(A/61/611) and in disagreement with the Joint General Comment number 18 on harmful practices of the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women. The UN Special Rapporteur on Health (A/70/213 para 112 m) and the UN Special Rapporteur on Torture (A/HRC/22/53 para 88) recommend states to end these practices. The UN Special Rapporteur on Health states that partial clitoridectomy as part of the treatment of intersex persons is a form of female genital mutilation (A/HRC/32/33 para 56).

### **Recommendations:**

- m) Implement mechanisms to protect intersex children against experimental medical treatments
- i) Implement effective legislative, administrative, judicial and other measures to ensure that no child or adult is subjected to unnecessary surgery or treatment without free and fully informed consent

### **Remedies for violations of the rights of intersex persons**

39. Due to a lack of awareness, knowledge and willingness amongst medical professionals, government officials and the judicial branch, there is still de facto impunity for health professionals performing unnecessary and irreversible surgery on intersex children. For example, partial clitoridectomy as performed with the normalizing treatment of intersex persons, is a form of Female Genital Mutilation (A/HRC/32/33 para 56). According to the Dutch Penal Code (Wetboek van Strafrecht) art. 300-304, 307, 308, this is a criminal offense punishable with imprisonment for 12 years or by a fine of max. 67,000 Euros. To date, no action has been taken to combat this violation.
40. Joint general recommendation 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices clearly states in paragraph 11 that “States parties to the Conventions have a duty to comply with their obligations to respect, protect and fulfil the rights of women and children. They also have a due-diligence obligation to prevent acts that impair the recognition, enjoyment or exercise of rights by women and children and ensure that private actors do not engage in discrimination against women and girls, including gender-based

violence.” In paragraph 13 it further notes that “the obligation to protect requires States parties to establish legal structures to ensure that harmful practices are promptly, impartially and independently investigated, that there is effective law enforcement and that effective remedies are provided to those who have been harmed by such practices. The Committees call upon States parties to explicitly prohibit by law and adequately sanction or criminalize harmful practices, in accordance with the gravity of the offence and harm caused, provide for means of prevention, protection, recovery, reintegration and redress for victims and combat impunity for harmful practices.” This complemented in paragraph 40: “A key element of any holistic strategy is the development, enactment, implementation and monitoring of relevant legislation. Each State party is under the obligation to send a clear message of condemnation of harmful practices, provide legal protection for victims, enable State and non-State actors to protect women and children at risk, provide appropriate responses and care and ensure the availability of redress and an end to impunity.

41. To date there are no remedies for victims. We recommend the government to start data collection on the present and past incidence of unnecessary surgery or treatment without the free and fully informed consent of intersex children and to ensure access to redress, and the right to fair and adequate compensation and rehabilitation for victims.

**Recommendation:**

- n) Ensure that human rights violations against intersex people are investigated and alleged perpetrators prosecuted, and that victims of such violations have access to effective remedy, including redress and compensation.



## VII. Summary of recommendations

We encourage the Committee on the Elimination of All Forms of Discrimination of Women to make the following recommendations to the Kingdom of the Netherlands:

- a) **Guarantee access to legal gender recognition for both intersex and transgender children and adults, without obstacles infringing the individual's right to self-determination (i.e. expert letter or lawsuit) and financial barriers**
- b) **Enable every individual to alter the gender as registered at the civil registry to undetermined or unregistered**
- c) **Enable parents of a new-born not to assign a gender at birth, to guarantee self-determination of the child at a later age**
- d) **Remove gender markers from ID documents**
- e) **Include promotion of tolerance and non-discrimination of LGBTI in the curriculum of all teacher academies**
- f) **Adapt Equal Treatment Act (Awgb) to include explicit prohibition of discrimination of trans and intersex people**
- g) **Guarantee equal access to basic gender affirmative health care through primary healthcare providers and reimbursement of all aspects of gender affirmative healthcare**
- h) **Abolish the diagnosis genderdysphoria for prepubertal children and implement further mechanisms to depathologize transgender people's gender affirmative healthcare needs**
- i) **Implement mechanisms to protect intersex children against experimental medical treatments**
- j) **Optimize law, policy and practice to lower hate crime rates and promote a higher percentage of perpetrators being prosecuted and convicted**
- k) **Issue an action program for countering hate crime against LGBTI, including indicators for success**
- l) **Make an agreement with police and public prosecutor to increase the number of perpetrators that are prosecuted for hate crimes against LGBTI**
- m) **Implement effective legislative, administrative, judicial and other measures to ensure that no child or adult is subjected to unnecessary surgery or treatment without free and fully informed consent.**
- n) **Ensure that human rights violations against intersex people are investigated and alleged perpetrators prosecuted, and that victims of such violations have access to effective remedy, including redress and compensation.**

## Contact information

If you require more information or clarification on the content of this report you may contact the following organizations:

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