



Alternative report for the 72nd session of the Committee Against Torture

The Netherlands

8 November – 3 December 2021

Joint NGO submission by:

NNID – Netherlands organization for sex diversity

TNN – Transgender Netwerk Nederland

COC Nederland

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Executive summary

Intersex children still undergo non-consensual unnecessary medical procedures to alter their sex characteristics. Several recommendations from the 65th session regarding this issue have been rejected, for other recommendations implementation has been limited.

Simultaneously, transgender people struggle to access needed health care, with an average wait time of two years. Hate crimes based on sexual orientation, gender identity and expression, and sex characteristics occur regularly. However, there is significant underreporting, and only in very few cases does this result in prosecution and/or conviction of the perpetrators. The implementation of the recommendation on hate crimes from the 65th session has been limited. The position of LGBTI asylum seekers can be very precarious. Research shows that 85% of the respondents experience discrimination and over 40% experience violence in asylum centres. While research has shown that stereotypes form the basis of policy and practice regarding LGBTI asylum claims, the government disagrees with these findings. New working instruction on LGBTI asylum-policy were developed, however, these have not yet been implemented. The right to determine ones' gender is not fully respected and amounts to discrimination in law, practice, and policy.

Summary of suggested questions

What measures have been taken to protect the physical integrity and autonomy of intersex people, such as a legal ban on non-consensual unnecessary medical treatments on intersex children, that can be safely deferred until a later age when intersex children can provide personal, prior, free, and fully informed consent?

Which steps have been taken to guarantee impartial counselling services and psychological and social support for all intersex children and their parents?

What measures have been taken to investigate non-consensual surgical interventions or other medical procedures performed on intersex persons and the prosecution and punishment of perpetrators and to ensure victims are provided with redress including adequate compensation?

What measures have been taken to solve the waiting lists for access to gender affirmative healthcare?

How does the government contribute in depathologization of protocols for gender affirmative health care, based on the new categories of gender affirmative health care provided by the ICD-11?

What measures have been taken to ensure that the Dutch government does not rely on stereotypes in the assessment of asylum claims from LGBTI people?

What measures have been taken to minimize reliance on stereotypes regarding LGBTI people through training of IND personnel?

What measures have been taken to guarantee the safety of LGBTI asylum seekers, such as LGBTI safety policy throughout all asylum centres, and housing specifically aimed at LGBTI asylum seekers?

Which steps are taken to provide early access and reimbursement to gender affirmative health care, especially hormone treatment and specialized mental health support, for all transgender asylum seekers in asylum centers?

What measures have been taken to guarantee access to a form of gender recognition for transgender and intersex asylum seekers based on self-determination during the period that their asylum request is being processed.

What steps have been taken to optimize the legal protection against hate crimes based on sexual orientation, gender identity and sex characteristics, and to prosecute and convict perpetrators?

How does the government of The Netherlands guarantee the continuation and improvement of data collection about LGBTI persons, including, but not limited to, social and physical wellbeing of LGBTI persons?

What steps have been taken to guarantee 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.

Which measures are taken to enable individuals to alter their legal gender registration to 'underdetermined' or 'unregistered'?

Introduction

NNID, TNN, and COC Nederland¹ have taken note of the invitation to submit a written contribution for the development of the List of Issues Prior to Reporting for the Netherlands by the Committee Against Torture during the 72nd session (8 November – 3 December 2021).

This alternative report highlights key issues that affect lesbian, gay, bi+, transgender and intersex (LGBTI) persons in the Netherlands. The report also provides more information on the actions taken by the government of the Netherlands following the recommendations on LGBTI hate crimes and the physical integrity and autonomy of intersex persons in the concluding observations during the 65th session of the Committee Against Torture.

The key issues are categorized into different sections, based on the articles of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Each section is concluded with suggestions for the development of the List of Issues Prior to Reporting for the Netherlands.

¹ **NNID Foundation** is an intersex-led human rights organization working for the equality, rights, and visibility of intersex people, **TNN** (Transgender Netwerk Nederland) works on the acceptance of gender diversity and the equality of transgender persons, **COC Nederland** is the largest Dutch LGBTI organization in the Netherlands. The three organizations are part of an alliance funded by the Dutch Ministry of Education, Culture, and Science (https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2017Z05577&did=2017D11620)

Physical and psychological integrity (Art. 2, 4, 10, 12, 14, 16)

Intersex

Intersex people are still subjected to non-necessary medical interventions, and intrusive and irreversible treatments, that can be safely deferred until a later age when intersex children can provide personal, prior, free, and fully informed consent.

These treatments include surgical interventions, to adjust the appearance of external sex characteristics, to remove internal reproductive organs that are not in line with the assigned sex², hormone treatments, and psychological treatments to enforce and strengthen the assigned sex and gender. Potential complications of these interventions are: loss of sensation, problems with urination, pain, infertility, scarring, the need for lifelong hormonal replacement therapy, psychological traumas and lifelong mental suffering.³ As a result of these unnecessary treatments, these children will often require life-long medical care. A Dutch Urologist indicated that some procedures in some cases take place approximately one year after birth.⁴ Naturally, at these ages children cannot provide consent for these unnecessary interventions.

It is often denied unnecessary medical treatments on intersex people still take place. However, there is ample evidence to the contrary. The European Society for Pediatric Urology and the Society for Pediatric Urology released a statement early 2020 to support continuing medical treatments that violate the right to self-determination of intersex children.⁵ Newspapers show that several young children undergo genital surgery every day according to several urologists⁶ and an endocrinologist⁷. These practices are also described in medical scientific publications⁸, patient information⁹ and information for general practitioners¹⁰. At medical conferences, presentations on intersex (under the medical term

² **Shnorhavorian M. Fechner PY**, Disorders of Sexual Differentiation. In: Avery's Diseases of the Newborn (Tenth Edition), 2018

³ Art.1 - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

⁴ **Kortmann, B.**: We opereren alleen een kind met DSD als het hele team, samen met ouders en kind, besloten heeft dat we daar goed aan doen. https://www.cyberpoli.nl/dsd/interviews/intvw_barbarakortman. Accessed 12 December 2019.

⁵ **ESPU** - SPU Consensus statement 2020: Management of Differences of Sex development (DSD). Draft published online at: <https://www.espu.org/members/documents/383-espu-spu-consensus-statement-2020-management-of-differences-of-sex-development-dsd> (accessed 20 April 2020).

⁶ **Hulshof A.** Kinderen met een onduidelijk geslacht: soms is vroeg opereren beter dan niets doen: Interview Kinderuroloog Barbara Kortmann Amsterdam, Nederland 2021 [adjusted 24 februari 2021; accessed 26 maart 2021 2021]. 24 februari 2021. URL: <https://www.trouw.nl/zorg/kinderen-met-een-onduidelijk-geslacht-soms-is-vroeg-opereren-beter-dan-niets-doen~b4f45d-/>. "Hopefully in twenty, thirty years these children will be much more accepted. Unlike in the past, many parents today have no problem at all if their child is homosexual. Although of course there is still a lot of gay discrimination in the Netherlands."

de Jong TPVM, Salvatore C. Achterhaalde misstanden. De Volkskrant. 6 June 2015, Pagina 21 Sect. Opinie en Debat, Rubriek U.

Joosten O. Iedere week wordt er in Nederland een kindje geboren met een onduidelijk geslacht [Brandpunt]. Hilversum, Nederland: KRO/NCRV; 2016 [accessed 22 May 2016]. 26 April 2016. URL: <http://brandpunt.kro-ncrv.nl/brandpunt/iedere-week-wordt-er-in-nederland-eeen-kindje-geboren-met-eeen-onduidelijk-geslacht/>.

Peters L. Hoe om te gaan met kinderen van wie het geslacht onduidelijk is. De Volkskrant. 7 april 2018, Pagina 14-16 Sect. Zaterdag.

Hulshof A. Wen Long (9) wil gewoon zichzelf zijn, als meisje én jongen. Trouw, 15 October 2020. [Accessed 15 October 2020] URL: <https://www.trouw.nl/cultuur-media/wen-long-9-wil-gewoon-zichzelf-zijn-als-meisje-en-jongen>

⁷ **Oosterom R.** 'De eerste reflex van ouders is vaak: Dokter, kunt u het goed maken?'. Trouw. 27 juli 2017, Pagina 7 Sect. Vandaag.

⁸ **Davis K.** Dubious equalities and embodied differences: Cultural studies on cosmetic surgery: Rowman & Littlefield; 2003.

⁹ **Deem K.** Intersekse kinderen mogen in Duitsland voortaan zelf beslissen over hun lichaam Amsterdam: DPG Media; 2021 [accessed 28 March 2021]. 27 March 2021. URL: <https://www.trouw.nl/buitenland/intersekse-kinderen-mogen-in-duitsland-voortaan-zelf-beslissen-over-hun-lichaam~beff2.46/>.

¹⁰ **Dehue T.** Betere mensen - over gezondheid als keuze en koopwaar. Amsterdam: Uitgeverij Augustus / Atlas Contact; 2014.

DSD) still detail cases, sharing images of intersex children's genitalia, and the surgical techniques used¹¹.

The issue was first raised to the Dutch government by members of the House of Representatives on 21 March 2011¹². The committee expressed their concerns about the physical integrity and autonomy of intersex persons in the concluding observations of the 65th session and made clear recommendations to the Kingdom of the Netherlands.¹³

In response to the Recommendations from CAT for better protection of intersex children a member of the House of Representatives repeatedly posed questions¹⁴ to the Minister for Medical Care.

On 05 February 2019¹⁵, the Dutch minister for Medical Care responded to the first of these questions. He said to the House of Representatives:

“The Netherlands does not fully share the recommendations of the UN Committee on intersex/DSD¹⁶, because they are very strict and, in my opinion, do not always do justice to the efforts of the healthcare professionals who, for example, work in the 6 specialised DSD centres (DSD = Disorders/Differences/ in Sex Development).”¹⁷

This position has been reiterated on two more occasions on 29 March 2019¹⁸, 15 April 2019¹⁹, and 21 June 2019²⁰. Below are examples of the position of the Dutch government presented by the Dutch Minister for Medical Care, specifically regarding the four sub articles.

“This means that parents and health care providers hold an important responsibility. [...] Although I consider it necessary to be very cautious regarding treatment without a medical indication of intersex/dsd children, I feel that a total ban would go too far.”²¹

“I share the UN Committee's conclusion that independent support and information on medical interventions and their consequences for parents and children is desirable.

¹¹ A Dutch urologist said at a conference:

‘And in a very large proportion of children who are born with sex characteristics that are a little unclear we often find no [medical] cause and you end up calling it a severe form of hypospadias. So it was with this little boy. And these parents had a strong desire to have this child operated on so that he would look a little more boyish. We do that kind of surgery as well.[...] I can tell you, I can't perform magic. I can operate but I don't make perfectly normal penises, not a perfectly normal urethra. So the wish of parents that their child has as normal a dick as other boys, I can't satisfy that.’

Kortmann B. Genitale chirurgie bij DSD. “Ik kan niet toveren” (Transcription presentation). NVVS Najaarscongress 2019: Geslachtsvariatie en Seksualiteit: voorbij het binaire denken; 29 November 2019; De Reehorst, Ede: Nederlandse Wetenschappelijke Vereniging voor Seksuologie; 2019.

¹² Vragen gesteld door de leden der Kamer, met de daarop door de regering gegeven antwoorden, Vergaderjaar 2010–2011, Aangangsel van de Handelingen, 's-Gravenhage, 21 March 2011.

¹³ **Committee Against Torture** concluding observation (52) recommendation (53) CAT: CAT/C/NLD/CO/7

Art.2 - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

¹⁴ Vragen gesteld door leden der Kamer, Tweede Kamer, vergaderjaar 2018-2019, Vragen, 's-Gravenhage, 12 December 2018 [no. 2018Z23582].

Vragen gesteld door leden der Kamer, Tweede Kamer, vergaderjaar 2018-2019, Vragen, 's-Gravenhage, 18 March 2019 [no. 2019Z05301].

Vragen gesteld door leden der Kamer, Tweede Kamer, vergaderjaar 2018-2019, Vragen, 's-Gravenhage, 7 May 2019 [no. 2019Z18607].

¹⁵ Brief van de Minister voor Medische Zorg, Tweede kamer vergaderjaar 2018-2019, 's-Gravenhage, 5 February 2019. [no. 2019D04390

¹⁶ DSD is the term for intersex people used in the medical sector.

¹⁷ Aangangsel van de Handelingen, Vragen gesteld door de leden der Kamer, met de daarop door de regering gegeven antwoorden, vergaderjaar 2018-2019, Aangangsel, Den Haag 05 February 2019 [no. 1422].

¹⁸ Brief van de Minister voor Medische Zorg, Tweede kamer vergaderjaar 2018-2019, 's-Gravenhage, 29 March 2019 [33 826 Mensenrechten in Nederland, no 28].

¹⁹ Antwoord op vragen van het lid Bergkamp over de aanbevelingen van het VN-Comité tegen Foltering (CAT) voor betere bescherming van intersekse kinderen <https://www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2019Z05301&did=2019D15655>

²⁰ Antwoord op vragen van de leden Westerveld en Özütok over het recht tot zelfbeschikking van intersekse baby's en kinderen <https://www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2019Z09083&did=2019D26375>

²¹ Brief van de Minister voor Medische Zorg, Tweede kamer vergaderjaar 2018-2019, 's-Gravenhage, 29 March 2019 https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2019Z06294&did=2019D13096

*There is a multidisciplinary professional guideline (2017). [...] The 6 specialised DSD centres in the Netherlands work according to this guideline.*²¹

*“I also endorse the UN Committee's third recommendation that there should be fully informed consent of persons with an intersex/DSD condition undergoing medical treatment. [...] However, it should be noted that children under the age of 12 cannot themselves give informed consent. In addition to the consent of the parents, the consent of the child itself is also required for a medical treatment of a child from the age of 12 years. From the age of 16, children are allowed to decide independently about their medical treatment, despite the fact that they are underage.”*²¹

*“I see no reason to take up the fourth recommendation of the UN Committee and start an investigation into past medical treatment to enable prosecution and punishment of health care providers as well as provisions for compensation to those concerned.”*²¹

It appears Dutch law is not in line with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and there has been no attempt to bring this section of the law in line with the convention²².

While there are no legal limitations on adjusting the sex characteristics of intersex children, this situation is very different for transgender persons and women. Transgender persons are only allowed to use hormone suppressants until age 16, hormone replacement from the age of 16 and surgical intervention may not take place until the age of 18.²³ Female genital mutilation is prohibited by law for all Dutch people, even when conducted outside of the Netherlands, has no statute of limitation, and is punishable with up to 12 years in prison, with the possibility to increase the punishment by 1/3 if the perpetrators are family members.²⁴ In spite of efforts from several members of the House of Representatives to raise the issue, it appears no legislative, administrative or other measures are being developed for intersex genital mutilation²⁵.

Specialized counselling services are available at the DSD-centres, however, these mental health workers are part of the DSD-teams, and are not impartial, as was recommended by the committee. Intersex people have reported that the counselling services they received actively supported and defended the physical treatment they had undergone.

The minister for Medical Care rejected the recommendation to perform an investigation and ensure redress and adequate compensation²⁶. The minister argued that no complaints have ever been filed to the Health Care and Youth Inspectorate regarding these issues. However, there is a statute of limitation. An older intersex man reported that he had recently found out about the procedures he underwent as a child. However, in spite of his attempts, he has not found any options for redress. Funding for a one-year research project into the number of intersex children receiving medical treatment to adjust their sex characteristics in the past ca. 15 years has been announced, but not yet awarded.

²² Art.16 - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

²³ Naezer, M., Oerlemans, A., Hablous, G., Claahsen- Van der Grinten, H., Van der Vleuten, A. & Verhaak, C. (2021). ‘We just want the best for this child’: contestations of intersex/DSD and transgender healthcare interventions. *Journal of Gender Studies*, DOI: 10.1080/09589236.2021.1881462.

²⁴ Wetboek van Strafrecht, Eerste Boek, Artikel 7, 70, 71, Tweede Boek, Artikel 300, 301, 302, 303, 304.

²⁵ Art.4 - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

²⁶ Art.12, 14 - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Regarding the fact that intersex persons in the Netherlands are still subjected to non-consensual unnecessary medical interventions and the recommendations (53) presented during the 65th session of CAT:

NNID, TNN and COC suggest to the Committee to ask the Government of the Netherlands:

What measures have been taken to protect the physical integrity and autonomy of intersex people, such as a legal ban on non-consensual unnecessary medical treatments on intersex children, that can be safely deferred until a later age when intersex children can provide personal, prior, free, and fully informed consent?

Which steps have been taken to guarantee impartial counselling services and psychological and social support for all intersex children and their parents?

What measures have been taken to investigate non-consensual surgical interventions or other medical procedures performed on intersex persons and the prosecution and punishment of perpetrators and to ensure victims are provided with redress including adequate compensation?

Transgender

The NGOs would like to stress that multiple international institutions have 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.

In the Netherlands there are three centres of expertise that provide medical gender affirmative healthcare to the vast majority of trans people seeking gender affirmative health care. The waiting before someone receives an intake at these centres increased from 24 weeks in 2016 to 65 weeks in 2021. 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. This waiting time is followed by a diagnostic phase of an average nine to ten months²⁷ by a psychologist or psychiatrist as part of the cautious gatekeeping to assess a person's eligibility for somatic gender affirmative care. The start of this necessary somatic care thus can take up to 107 weeks.

Pathologisation of trans people is still widespread. This has severe consequences for the well-being of both children and grown-ups as they are regularly confronted with the idea that they are suffering from mental and psychological issues. The incentive provided by the World Health Organization depathologising trans people's need for gender affirmative health care with the introduction of new categories within ICD-11² has not led to the Dutch centres of expertise presenting any plans to rethink their protocols. These protocols are still centred on the premise that trans people need to receive a diagnosis by a psychologist or psychiatrist as precondition for receiving the medical gender affirmative treatments they need.

²⁷ Zorgvuldig Advies & Transvisie. Ervaringen en behoeften van transgenders in de zorg (2019)

Transgender minors only have access to two out of three centres of expertise. Parents are advised to assume a strategy of watchful waiting before the onset of puberty regarding the child's gender identity at the clinic that treats most of these minors. This goes against research outcomes that show that supporting a child in their gender identity, by using correct name and pronouns significantly improves their mental health²⁸. Gender fluidity and experimenting with gender is not respected as part of a child's development, but problematized to protect a child against regret.

NNID, TNN, and COC suggest the Committee to ask the Government of the Netherlands:

What measures have been taken to solve the waiting lists for access to gender affirmative healthcare?

How does the government contribute in depathologization of protocols for gender affirmative health care, based on the new categories of gender affirmative health care provided by the ICD-11?

²⁸ Olson et al., *Pediatrics* (2016), Mental Health of Transgender Children Who Are Supported in Their Identities

Refugees (Art. 3)

LGBTI

In 2018, COC published the research report *Pride or Shame*, assessing LGBTI asylum applications in the Netherlands.²⁹ The main outcome of the research was that Dutch policy and practice regarding LGBTI asylum claims rely on stereotypes. Lesbian, gay and bisexual asylum seekers in the Netherlands had to prove their sexual orientation to the Dutch Immigration and Naturalization Services (IND) by describing the ‘process of awareness and self-acceptance’ that they have gone through. The Dutch government denies that their policy is based on stereotypes. According to the government, there were just a few misinterpretations of the policy. The Council of State concluded that in some cases stereotypes did play a role.³⁰

Together with other organizations, COC advised the government to eliminate ‘a process of awareness and self-acceptance’ as a criterium for LGBTI asylum seekers, and to include this instruction in schooling and training of IND personnel. COC further advised the government to increase the weight of third-party statements, such as partners of asylum seekers, in assessing someone’s asylum request, to introduce the ‘four-eyes principle’ when in doubt about the authenticity of someone’s story, and to guarantee the possibility for LGBTI asylum seekers to request a Dutch interpreter, instead of an interpreter from the country of origin.³¹

Based on this advice, amongst others, the Dutch government announced a new working instruction regarding LGBTI asylum-policy.³² However, COC notices that policy improvements have not been implemented, and that most suggestions have been ignored. The IND continues to reject LGBTI asylum seekers based on stereotypes, and it still frequently ignores statements by third parties, such as partners.³³ COC has presented the State Secretary for Asylum with a list of examples of asylum seekers who have been rejected based on the aforementioned unsound criteria,³⁴ and the Dutch Association for Asylum Lawyers and Legal Advisors (VAJN) reports on numerous cases in which asylum requests by LGBTI persons have been rejected based on faulty rules and requests of evidence.³⁵

The situation of LGBTI asylum seekers is particularly unsafe in the Netherlands: over the past couple of years, civil society organizations reported numerous cases of violence against LGBTI persons in asylum centres, amongst others the incident of a lesbian couple who were attacked with boiling water in 2020.³⁶ According to the recent survey from LGBT Asylum Support 85% of all participants experienced discrimination within asylum centres and more than 40% has experienced violence. 64% of participants felt that they cannot discuss this

²⁹ COC Netherlands (2018) *Pride or Shame: Assessing LGBTI Asylum Applications in the Netherlands Following the XYZ and ABC Judgments*, <https://www.refworld.org/docid/5c6eb3344.html>.

³⁰ Afdeling Bestuursrechtspraak Raad van State (August 12, 2020) ECLI:NL:RVS:2020:1940.

³¹ COC Nederland October 10, 2019: Verbeter het LHBTI-asielbeleid, <https://www.coc.nl/homepage/verbeter-het-lhbt-asielbeleid>.

³² Hoofddirecteur IND (July 7, 2018) WI 2018/9 Horen en beslissen in zaken waarin lhbt-gerichtheid als asielmotief is aangevoerd, Ter Apel: IND.

³³ COC Nederland (June 29 2019): IND voert het nieuwe LHBTI-asielbeleid slecht uit, <https://www.coc.nl/homepage/ind-voert-het-nieuwe-lhbt-asielbeleid-slecht-uit>.

³⁴ COC Nederland (June 9 2019) Gebrekkige uitvoering LHBTI-asielbeleid (letter, ref.nr.: 19.025 / 6.30.1).

³⁵ NPO Radio 1 (June 9 2021) 'Homoseksuele asielzoekers worden de dood ingestuurd' (podcast)

<https://www.nporadio1.nl/nieuws/podcast/cb0a2188-2f54-44c6-bbe1-565c6fbaa755/homoseksuele-asielzoekers-worden-de-dood-ingestuurd>.

³⁶ Kortekaas, S. (2021) Brandbrief falend lhbt-beleid lhbt-asielzoekers, Groningen: LGBTI Asylum support.

with the specially assigned LGBTI-confidential councillors and 44% was advised to 'go back into the closet', to hide their sexual or gender identity.³⁷

Transgender

Access to gender affirmative health care for transgender asylum seekers is severely limited and mostly absent. Only when one can provide proof of receiving care in their country-of-origin asylum seekers are eligible to receive hormone treatment from the health care provider at the asylum centre. Without proof they need to wait to get residence status before they can seek gender affirmative treatment at a centre of expertise, where they will be placed on the long waiting list like any other person. With an asylum procedure that can take up at least two years and a 60-week waiting list, access to necessary gender affirmative health care is severely limited for transgender refugees. This leaves them severely vulnerable for mental health crises on top of already being vulnerable with many of them having experienced (sexual) abuse and violence in their country of origin.

Intersex

It is not clear if discrimination based on sex characteristics is accepted as an asylum ground. Children of asylum seekers may be at higher risk for non-consensual, unnecessary medical treatment. A Dutch urologist reported that they had performed surgery on the child of refugees who would be returning to their country of origin, as the norms of the country of origin would be different than the Netherlands.³⁸

NNID, TNN and COC suggest to the Committee to ask the Government of the Netherlands:

What measures have been taken to ensure that the Dutch government does not rely on stereotypes in the assessment of asylum claims from LGBTI people?

What measures have been taken to minimize reliance on stereotypes regarding LGBTI people through training of IND personnel?

What measures have been taken to guarantee the safety of LGBTI asylum seekers, such as LGBTI safety policy throughout all asylum centres, and housing specifically aimed at LGBTI asylum seekers?

Which steps are taken to provide early access and reimbursement to gender affirmative health care, especially hormone treatment and specialized mental health support, for all transgender asylum seekers in asylum centers?

What measures have been taken to guarantee access to a form of gender recognition for transgender and intersex asylum seekers based on self-determination during the period that their asylum request is being processed.

³⁷ LGBT Asylum Support (2020) Keep it silent. Gewelddelicten in AZCs naar LHBTI asielzoekers

LGBT Asylum Support (2000) We Feel Unsafe: Onveiligheid in AZC's bij LHBTI-asielzoekers.

³⁸ Hulshof, A. Kinderen met een onduidelijk geslacht: soms is vroeg opereren beter dan niets doen. [Children with unclear sex: sometimes early surgery is better than doing nothing]. Trouw. 24 februari 2021.

Hate crimes against LGBTI people (Art. 12, 16)

Many lesbian, gay, bisexual, transgender, and intersex persons (LGBTI) in the Netherlands encounter hate crimes, but only in very few cases does this result in prosecution and/or conviction of the perpetrators.³⁹

One in five LGBT persons has encountered LGBT-related violence.⁴⁰ Most violence against lesbian or bisexual women has sexual connotations.⁴¹ 46% of transgender women in the Netherlands experienced violence in the year prior to a 2015 study.⁴² According to the EU LHBTI Survey, one in ten LGB persons in the Netherlands has been physically attacked in the five-year period before the research.⁴³ The same research shows that 22% of intersex people in Europe experienced a physical and/or sexual attack and 38% experienced violent in-person threats.³⁰

Around one fifth of the LGBTI persons in the Netherlands has reported physical or sexual attacks to the police, and only one in ten filed a report with an anti-discrimination facility ('Meldpunt Discriminatie').³⁰ Almost one third of all reports of discrimination filed with the police in 2019 concerned discrimination based on sexual orientation; this is a slight decrease since 2018 (29% versus 32%). Out of these reports, 16% concerned threats, and 17% concerned violence. Reports made to anti-discrimination facilities, however, show a significant increase in cases of discrimination based on sexual orientation: from 4% in 2018 to 9% in 2019.⁴⁴ It is remarkable that with the high instances of violence against LGBTI persons reported in the above study that there is severe underreporting by LGBT people, and even no reporting by intersex people, to the police of such cases.

In its concluding observations of the 65th session, the Committee expressed their concerns about hate crimes against LGBT persons in the Netherlands and made a clear recommendation for the Kingdom of the Netherlands to protect LGBT persons from threats and any form of violence, including hate crimes.⁴⁵

The government of the Netherlands has not taken all necessary measures to protect LGBTI persons from threats and any form of violence, including hate crimes. The Minister of Justice and Security and the Minister of Education, Culture and Science jointly launched the *Action Plan Safety LGBTI 2019-2022*, to promote the social and physical safety of LGBTI persons.⁴⁶ However, this Action Plan does not provide new measures, nor measures that are far-reaching enough.⁴⁷

³⁹ Movisie (2021) Handreiking LHBTI-emanipatie. Feiten en cijfers op een rij.

⁴⁰ Feddes, R. & Jonas, K. (2016) LGBT Hate Crime, Psychological Well-Being, and Reporting Behaviour: LGBT Community and Police Perspectives. Amsterdam: Universiteit van Amsterdam.

⁴¹ Felten, H & Schuyf, J. (2011) Zoenen is gevaarlijk. Onderzoek naar geweld tegen lesbische vrouwen, Utrecht: Movisie.

⁴² Transgender Netwerk Nederland (2015) 'Veilig, zolang men het niet merkt...' Een onderzoek naar de veiligheid van transgender personen in de openbare ruimte in Nederland.

⁴³ European Union Agency for Fundamental Rights (2020) A long way to go for LGBTI equality. EU LGBTI Survey II. Luxembourg: Publications Office of the European Union.

⁴⁴ Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, de Nationale Politie en Art.1. Discriminatiecijfers 2019. Een rapport over registraties van discriminatie-incidenten door de politie, en meldingen bij antidiscriminatie voorzieningen en andere organisaties in Nederland. (2020)

⁴⁵ Committee Against Torture Concluding observation (50) – recommendation (51) CAT/C/NLD/CO/7

⁴⁶ Ministry of Justice and Safety (April 2, 2019), letter to Parliament: 'Action Plan Safety LGBTI'.

⁴⁷ COC Nederland (April 3, 2019) LHBTI-beweging boos over ambitieeloos actieplan tegen geweld (<https://www.coc.nl/homepage/lhbt-beweging-boos-over-ambitieeloos-actieplan-tegen-geweld>).

Solid research and data collection are essential for efficient measures to protect the safety of LGBTI persons, and LGBTI policy in general. To this end, the Netherlands Institute for Social Research publishes a biannual LGBT Monitor.⁴⁸ However, no report has appeared since 2018 and it is currently unclear if and when the new report will appear. In addition, the LGBT Monitor provides limited to no insight about transgender and intersex persons.

Regarding the fact that LGBTI persons still encounter hate crimes, and the recommendation (51) presented during the 65th session of CAT:

NNID, TNN and COC suggest to the Committee to ask the Government of the Netherlands:

What steps have been taken to optimize the legal protection against hate crimes based on sexual orientation, gender identity and sex characteristics, and to prosecute and convict perpetrators?

How does the government of The Netherlands guarantee the continuation and improvement of data collection about LGBTI persons, including, but not limited to, social and physical wellbeing of LGBTI persons?

⁴⁸ Buisekom, G. van & Kuypers, L. (2018): LHBT-monitor 2018. De leefsituatie van lesbische, homoseksuele, biseksuele en transgender personen in Nederland, Den Haag: Sociaal-Cultureel Planbureau.

Legal gender recognition (Art. 2, 16)

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 for many trans and intersex people to be able to participate in society and live a life of dignity and respect.⁴⁹

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, preventing the individual from discrimination. Failure to recognize the gender identity of transgender and intersex people is a breach of articles 2 and 16 of the convention.

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.

The NGOs hold that the by law prescribed expert statement is in contradiction with article 2 of the convention and that the Dutch government should take further legislative, administrative, and other measures to guarantee respect for the autonomy and physical and psychological integrity of transgender and intersex persons, including by removing preconditions for the legal recognition of the gender identity of transgender persons.

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.

No provision is presently available to transgender and intersex asylum seekers to receive gender recognition while their asylum request is assessed. This assessment can take up to two years or longer. In dealings with the Dutch legal and immigration system respect for their gender identity is not guaranteed.

In the recording and assignment of gender at birth, the Dutch government is still not considering 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

⁴⁹ Art.1 - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

options of choosing between 'male' and 'female', leaving out non-binary trans and intersex people.

Currently, the Netherlands government has sent a proposal to parliament to change the Gender Identity Recognition Act. The expert letter will be removed in favour of self-declaration for anyone older than sixteen. For anyone younger than sixteen a request must be made to a judge who will have to consider the interest of the child. No option for non-binary people has been presented for them to get their gender recognized. We urge the Dutch government to guarantee that the gender recognition reflects binary and non-binary options, is easy to change for both children and adults, and for Dutch residents, migrants, and asylum seekers, is separated from personal records and only recorded when individuals consent.

NNID, TNN, and COC suggest the Committee to ask the Government of the Netherlands:

What steps have been taken to guarantee 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.

Which measures are taken to enable individuals to alter their legal gender registration to 'underdetermined' or 'unregistered'?