



**Shadow report for the 61st session of the
Committee of Economic, Social and Cultural
Rights**

**Review of the Kingdom of the Netherlands,
June 2017**

**The status of the Economic, Social and Cultural
rights of Lesbian, Gay, Bisexual, Transgender
and Intersex people in the Netherlands**

Joint NGO submission by:

Transgender Netwerk Nederland – TNN

Nederlands Netwerk voor Intersekse/DSD – NNID

Federatie van Nederlandse verenigingen tot integratie van Homoseksualiteit –
COC Nederland.

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Key Words

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

Executive summary

Under its international and domestic obligations, the Kingdom of the Netherlands is required to guarantee the economic, social and cultural rights of lesbian, gay, bisexual, transgender and intersex persons in the Kingdom of the Netherlands. This joint NGO report gives recommendations to the Netherlands how to comply with its obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) to respect and protect the human rights of LGBTI persons. In particular this report will focus on the Netherlands' obligations to guarantee the enjoyment, without discrimination on grounds of sexual orientation, gender identity, gender expression or sex characteristics, of the following rights: 1. the right to work (article 6 and 7); 2. the right to health (article 12), including the right to sexual and reproductive health; 3. the right to education (article 13).

I. Introduction

1. This shadow report has been compiled on behalf of Transgender Netwerk Nederland (TNN), Nederlands Netwerk voor Intersekse/DSD (NNID) and COC Nederland. The report serves as a basis for dialogue with the State Party during the 61st session of the Committee of Economic, Social and Cultural Rights.
2. Every chapter of this report introduces specific problems of discrimination against lesbian, gay, bisexual, transgender and intersex persons in the Netherlands, provides the related and relevant articles of the International Covenant on Economic, Social and Cultural Rights (ICESCR), 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. Under its international and domestic obligations, the Kingdom of the Netherlands is required to guarantee the economic, social and cultural rights of lesbian, gay, bisexual, transgender and intersex persons in the Kingdom of the Netherlands. This joint NGO report gives recommendations to the Netherlands how to comply with its obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) to respect and protect the human rights of LGBTI persons. In particular, this report will focus on the Netherlands' obligations to guarantee the enjoyment, without discrimination on grounds of sexual orientation, gender identity, gender expression or sex characteristics, of the following rights: 1. the right to work (article 6 and 7); 2. the right to health (article 12), including the right to sexual and reproductive health; 3. the right to education (article 13).

II. Non-discrimination

4. Despite relatively good anti-discrimination standards in law and policies, there are still gaps to be filled in order to guarantee equality and non-discrimination of people based on sexual orientation, gender identity, gender expression and sex characteristics. Under its international and domestic obligations, the Netherlands is required to provide effective protection against discrimination of LGBTI persons. The government needs to legally guarantee protection against discrimination by upholding its penal code; create legal protection and implement policies and plans of actions against discrimination of trans and intersex people in the labour market; implement a proper education curricula to combat discrimination; and, act on ongoing laws and practices sustaining discrimination in gender recognition and self-determination.

Legal protection in the penal code (art. 2, para. 2)

5. Of LGBTI people in The Netherlands 26 percent encountered discrimination in the public sphere¹ in the last year. Of transgender people in The Netherlands, one third experience discrimination at least once a month.² A total of 5721 cases of (all kinds of) discrimination were reported to the police in 2014, of which 1403 cases on grounds of sexual orientation or gender identity.³ These numbers show the need for good legal protection against discrimination, in particularly discrimination based on sexual orientation, gender identity and sex characteristics.
6. Recently, a draft law has been introduced in the Dutch parliament, aiming to abolish three articles in the Dutch penal Code (137 c-e) that protect against discrimination based on amongst other things sexual orientation. If the law were to be adopted, inciting hatred and insulting people on the grounds of their sexual orientation would no longer be punishable. We call on the government to do everything in its power to prevent lowering the level of protection against discrimination that the Dutch Penal Code offers and therefor prevent the abolishing of paragraphs 137 c-e.

Recommendation:

- a) Uphold existing anti-discrimination paragraphs 137 c-e of the Dutch Penal Code.

Legal protection in the labour market (art. 2, para. 2.)

7. Current legal protections against discrimination of transgender and intersex people in the labour market are insufficient. This motivated the Minister of Interior to inform Dutch parliament on the government's positive view on adapting the Equal Treatment

¹ LHBT-monitor 2016, Sociaal en Cultureel Planbureau, May 2016, p. 77 (comissioned by the Dutch government)

² Veilig, zolang men het niet merkt... Transgender Netwerk Nederland, October 2015, p. 3.

³ Discriminatiecijfers Politie 2014, p. 21-22. Verwey-Jonker Instituut 2015. Commissioned by the Dutch government.

Act (Algemene wet gelijke behandeling) and anti-discrimination provisions to explicitly include discrimination against transgender persons. Parliament then took initiative and presented a legislative proposal to change the Equal Treatment Act, to explicitly prohibit discrimination on grounds of gender identity, gender expression and sex characteristics. Discussion and voting on this proposal in Parliament is expected to be held later in 2017.

8. This means that The Netherlands has yet to implement such a specification of the law. We ask the Government to continue its constructive contribution towards realization of the legislative proposal by parliament to explicitly include protection of transgender and intersex persons in the Equal Treatment Act.

Recommendation:

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

Discrimination and exclusion in employment (art. 2, para 2, 6 & 7)

9. Transgender persons in the Netherlands face socio-economic inequality. A recent study shows that transgender persons more often, compared to the general population, have a low income (53% transgender persons against 30% of the general population) and have no work (59% transgender persons against 38% of the general population)⁴ There are some indications that the labour market participation of intersex persons is also below average.⁵
10. High rates of under or unemployment of transgender persons reflects a systematic labour exclusion of transgender persons. Another research shows that more than 40% of the transgender persons who participated in this study face discrimination and bullying in the labour market and at the workplace on ground of their gender identity and/or expression.⁶
11. These numbers show that the right to work, and the right to exercise work under just and favourable conditions is still not a practice in the Netherlands. Under articles 6, 7 and 2(2) of the Covenant, the Netherlands is obligated to protect LGBTI persons from employment discrimination.⁷ General comment no. 20 of art. 2(2) says that states parties should ensure that strategies, policies and plans of actions are in place and implemented in order to address formal and substantive discrimination by public and private actors.⁸

⁴ L. Kuyper, *Transgender personen in Nederland*. Den Haag: Sociaal Cultureel Planbureau (SCP), 2017.

⁵ J. Van Lisdonk, *Leven met intersekse/dsd*, Den Haag: Sociaal Cultureel Planbureau (SCP), 2014; T. Jones, B. Hart, M. Carpenter (et al.) (2016) *Intersex. Stories and Statistics from Australia*: Open Book Publishers, 2016.

⁶ T. Glasner & E. van Alphen, *Transgender en werk*. Factsheet Universiteit voor Humanistiek, Transgender Netwerk Nederland, Universiteit Maastricht en Gendertalent. Utrecht, 2017.

⁷ Covenant, supra note 1. Arts 2(2), 6 and 7; UN Committee on Economic, Social and Cultural Rights, *General Comment no 18: The Right to Work* (art. 6 of the Covenant), 6 February 2006 E/C.12/GC/18.

⁸ UN Committee on Economic, Social and Cultural Rights, *General Comment no. 20: Non-discrimination in Economic, Social and Cultural Rights* (art. 2, para 2., of the ICESCR), 2 July 2009, E/C.12/GC/20.

12. Eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer from prejudice.⁹ The Netherlands took already some steps: it provides transgender persons with employment counselling and combats discrimination in the labour market in general and based on ethnic origin specifically. However, in the case of transgender and intersex persons, we ask the government to take more and more specific measures to prevent, diminish and eliminate the conditions and attitudes which cause discrimination of transgender and intersex persons.

Recommendation:

c) Take all necessary measures in policies, strategies and plans of action to improve the situation of transgender persons and intersex persons in the labour market.

Discrimination in education (art. 13)

13. Education on sexual orientation and gender identity is mandatory by law in the Netherlands since 2012. Research shows that the law is not being implemented properly. Though most school staff say they find the issue important and that they do give it (some) attention in school¹⁰, 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.¹¹

14. Discrimination and bullying at school threaten the right for LGBT youth to receive an education.¹² 51 Percent of openly lesbian, gay and bisexual youth in the Netherlands have experienced discrimination because of their identity in the last 12 months. ‘Homo’ is one of the most used swearing words in Dutch schools, 87 percent of Dutch LGBT youth report it being used. Suicide rates among LGBT youth in The Netherlands are almost five times higher than average (9 percent of LGBT youth has attempted suicide as compared to 2 percent of heterosexual youth) and research shows a causality between the discrimination that LGBT-youth experience and these high suicide rates.¹³ These number clearly show the need to implement the law properly and to take additional steps to combat violence and discrimination to which the Netherlands is committed.

⁹ UN Committee on Economic, Social and Cultural Rights, *General Comment no. 20*.

¹⁰ Omgaan met seksualiteit en seksuele diversiteit. Inspectie van het Onderwijs, June 2016. Commissioned by the Dutch government.

¹¹ EenVandaag, 2016: <http://www.eenvandaag.nl/uploads/doc/Rapport%20homolessen.pdf>

¹² UN Committee on Economic, Social and Cultural Rights. General Comment No 13. The right to education (article 13 of the Covenant).8 december 1999. E.C.12/1999/10.

¹³ Jongeren en seksuele orientatie. Sociaal en Cultureel Planbureau, January 2015. Commissioned by the Dutch government.

15. 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 discrimination¹⁴. 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.
16. 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 create exclusion and discrimination of intersex persons.

Recommendation:

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

Discrimination in gender recognition and self-determination (art 2, para 2.)

17. The assigned gender at birth is proven to be an obstacle for trans and intersex persons at school and work, 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 transgender 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.
18. Over the past years, the government has taken steps to tackle this form of discrimination and removed from law the sterilization requirement and the requirement of physical adaptation to the desired gender in connection with sex registration. However, intersex persons still need a judicial approval and transgender people aged 16 and older need an expert letter from a doctor or psychologist to get access to legal gender recognition. The right to determine ones’ gender is not fully respected and amounts to discrimination in law, practice and policy. The expert letter as well as the lawsuit both create a financial barrier for recognition before the law. Transgender people under the age of 16 have no access to legal gender recognition.

¹⁴ 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.

19. In the recording and assignment of gender at birth, the Dutch government is 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 people.
20. 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:

- e) 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
- f) Enable every individual to alter the gender as registered at the civil registry to undetermined or unregistered
- g) Enable parents of a new-born not to assign a gender at birth, to guarantee self-determination of the child at a later age
- h) Remove gender markers from ID documents

III. Highest attainable standard of physical and mental health

Standards of and access to gender affirmative healthcare (art. 12)

21. In the Netherlands there are two 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.¹⁵
22. Not all treatments necessary to complete the transition to male or female are covered or are only partially covered by the basic health insurance (breast reconstruction; facial surgery; erection prostheses, etc.). Furthermore, 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.

¹⁵ E.M. van den Boom, *Onderzoek transgenderzorg Nederland*. Amsterdam: Stichting Transvisie, 2016

23. Transgender persons face barriers in exercising their right to the highest attainable standard of physical and mental health, article 12(1). We would like to stress that CEDAW, the Dutch Human Rights Commission and the Human Rights Commissioner of the Council of Europe¹⁶ 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.
24. 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.¹⁷ 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.
25. 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 gender affirmative health care, is to abolish the diagnosis genderdysphoria for prepubertal children since they do not need medical treatments yet.

Recommendations:

- i) Guarantee equal access to basic gender affirmative health care through primary health care providers and reimbursement of all aspects of gender affirmative health care
- j) Abolish the diagnosis genderdysphoria for prepubertal children and implement further mechanisms to depathologize transgender people's gender affirmative health care needs
- k) 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

¹⁶ For example: Human Rights and Gender Identity. Commissioner for Human Rights, Council of Europe, 2009, p.18.

¹⁷E.M. van den Boom, *Onderzoek transgenderzorg Nederland*. Amsterdam: Stichting Transvisie, 2016, p 17.

Violence against and ill-treatment of intersex children (art. 12)

26. 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 journals¹⁸, information for general practitioners¹⁹, information for parents of newborns²⁰ and a letter to the editor of a Dutch newspaper written by two doctors who regularly perform genital surgeries on intersex children²¹.
27. 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.
28. Medical interventions on intersex children have proven negative consequences for the individual. Per example, health professionals often try to prevent virilization of female fetuses with Congenital Adrenal Hyperplasia (CAH)²². There is only limited information available on the results of this type of medical intervention²³. Studies show however, that 7 out of 8 children who were exposed to treatment had no recognizable benefit. The treatment does however have unfavorable influences on the development

¹⁸ Wolffenbittel KP. Disorders of sex development: méér dan alleen een andere naam. Tijdschrift voor Urologie. 2015;5(1):8-12; Wolffenbittel 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; Wolffenbittel 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

¹⁹ 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.: Bijniervereniging NVACP, Vereniging Samenwerkende Ouder- en Patiëntenorganisaties (VSOP), Nederlands Huisartsen Genootschap (NHG); 2011.

²⁰ UMC St Radboud. Behandelteam meisjes met adrenogenitaal syndroom (AGS): Patiënteninformatie. Nijmegen, Nederland: UMC St Radboud; 2011.

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

²² 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.: Bijniervereniging 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.

²³ Dreger A, Feder EK, Tamar-Mattis A. Prenatal dexamethasone for congenital adrenal hyperplasia. Journal of bioethical inquiry. 2012;9(3):277-294.

of cognitive functions²⁴. Health professionals often believe that the sex assignment of children with Congenital adrenal hyperplasia (CAH) is not an issue²⁵. 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 children²⁶. 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 and 24.3. b We therefore highly recommend the government to protect children against unproven and unscientific medical treatments.

29. 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”).
30. 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). The ‘normalizing’ treatment of intersex people in the Netherlands in general is a breach of art. 12 (2c) of ICESCR. It is also 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.

²⁴ 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.

²⁵ 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.

²⁶ Liao L-M, Wood D, Creighton SM. Parental choice on normalising cosmetic genital surgery. *BMJ*. 2015;351.

Recommendations:

- k. 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
- l. Implement mechanisms to protect intersex children against experimental medical treatments
- m.

Violence based on sexual orientation, gender identity and sex characteristics (art. 12)

- 31. The right to sexual and reproductive health includes ‘the right of LGBTI persons to be fully respected for their sexual orientation, gender identity and intersex status’. State parties are obliged to combat homophobia and transphobia, that cause violence and discrimination.²⁷ Unfortunately, many lesbian women, gay men, bisexual, transgender- and intersex persons in The Netherlands encounter hate crimes, but only in very few cases this results in prosecution and/or conviction of the perpetrators.

- 32. About seven in ten LGBTI persons in The Netherlands experience discriminatory physical or verbal violence because of their identity.²⁸ Specific research among transgender persons in The Netherlands shows that 43 percent experienced violence in the last 12 months²⁹. Thus, more than seven hundred thousand LGBTI people in The Netherlands experience violence related to their identity.³⁰ In 2014 1403 cases of hate crimes were reported to the police, up from 380 in 2008.³¹ 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.³² 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.³³ Thus, whereas hundreds of thousands LGBTI persons in The Netherlands experience hate crimes and discrimination, only about 10 perpetrators are convicted each year.

- 33. 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.

²⁷ Committee on Economic, Social and Cultural Rights, General Comments No 22 on the Right to Sexual and Reproductive Health (article 12 of the ICESCR) U.N. Doc. E/C/12/GC/22, paragraph 23.

²⁸ Geweld tegen homoseksuele mannen en lesbische vrouwen. WODC/Movisie, 2009. Commissioned by the Dutch government.

²⁹ Veilig, zolang men het niet merkt... Transgender Netwerk Nederland, October 2015, p. 3.

³⁰ Using a conservative estimate that about 6 percent of the Dutch population of 17 million is LGBTI.

³¹ Discriminatiecijfers politie 2014, Verwey-Jonker Instituut, 2014. Commissioned by the Dutch government.

³² POLDIS rapportage 2012, p. 11. Verwey-Jonker Instituut 2013. Commissioned by the Dutch government.

³³ Parliamentary document 30 950, 75, appendix p.3

34. In its Security Agenda 2015-2018³⁴ 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:

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

³⁴ Veiligheidsagenda 2015-2018, p.11.

IV. Summary of Recommendations

We strongly encourage the Committee of Economic, Social and Cultural Rights to make the following recommendations to The Kingdom of the Netherlands:

- a) Uphold existing anti-discrimination paragraphs 137 c-e of the Dutch Penal Code.
- b) Adapt Equal Treatment Act (Awgb) to include explicit prohibition of discrimination of trans and intersex people
- c) Take all necessary measures in policies, strategies and plans of action to improve the situation of transgender persons and intersex persons in the labour market.
- d) Include promotion of tolerance and non-discrimination of LGBTI in the curriculum of all teacher academies.
- e) 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
- f) Enable every individual to alter the gender as registered at the civil registry to undetermined or unregistered
- g) Enable parents of a new-born not to assign a gender at birth, to guarantee self-determination of the child at a later age
- h) Remove gender markers from ID documents
- i) Guarantee equal access to basic gender affirmative health care through primary health care providers and reimbursement of all aspects of gender affirmative health care
- j) Abolish the diagnosis genderdysphoria for prepubertal children and implement further mechanisms to depathologize transgender people's gender affirmative health care needs
- k) 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
- l) Implement mechanisms to protect intersex children against experimental medical treatments
- m) Optimize law, policy and practice to lower hate crime rates and promote a higher percentage of perpetrators being prosecuted and convicted
- n) Issue an action program for countering hate crime against LGBTI, including indicators for success
- o) Make an agreement with police and public prosecutor to increase the number of perpetrators that are prosecuted for hate crimes against LGBTI

V. Contact Information

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Appendix A

SOGIESC Recommendations UPR Netherlands

- 1) Australia: Implement measures to protect intersex persons from discrimination.
- 2) Belgium: Ensure comprehensive sexuality education is integrated into the national school curriculum, including on topics such as sexual diversity, sexual rights and gender equality
- 3) France: Continue efforts to eliminate discrimination, in particular with respect to LGBTI person and with respect to women on the labour market.
- 4) Ireland: We urge the Netherlands take further efforts to protect LGBTI persons from violence and discrimination including through increasing protection from and appropriate prosecution of hate crime; and to consider moving to a system of self-declaration of gender identity in the process of recognition of the gender of transsexual persons.
- 5) Israel: Guarantee access to legal gender recognition for both intersex and transgender people of all ages, without legal, administrative or financial barriers; Continue the development of policies to fight hate speech; Ensure training of prosecutors and security forces so they can identify, investigate and prosecute cases of gender-based violence
- 6) Slovenia: Integrate human rights education into the national school curriculum, provide sufficient resources to human rights education and training of teachers and ensure that they receive training in topics such as sexual diversity, sexual rights, resilience, gender equality and consent.
- 7) Sweden: Issue a national action plan for countering discrimination as well as hate crimes, including indicators for success.

Appendix B

Compilation of SOGIESC-specific Concluding Observations CEDAW the Netherlands

Stereotypes and harmful practices

21 The Committee welcomes the State party's efforts to combat discriminatory gender stereotypes and harmful practices such as female genital mutilation and crimes in the name of so-called honour, as well as the adoption of the Forced Marriages (Countermeasures) Act, which entered into force in December 2015. The Committee is, however, concerned that:

(e) Medically irreversible sex-assignment surgery and other treatments are performed on intersex children.

22. The Committee recommends that the State party:

(f) Develop and implement a rights-based health-care protocol for intersex children which ensures that children and their parents are properly informed of all options and that children are, to the greatest extent possible, involved in decision-making about medical interventions and that their choices are fully respected.

Gender-based violence against women

23. The Committee commends the State party on its efforts to address gender-based violence against women such as the adoption of the Social Support Act (2015) which broadened the concept of social support to include safety in the domestic setting and the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) in 2015. However, the Committee remains concerned at:

(f) Reports of hate crimes against lesbian, bisexual, transgender and intersex women.

24. In line with its general recommendation No. 19 (1992) on violence against women, the Committee recommends that the State party:

(f) Intensify efforts to combat hate crimes against lesbian, bisexual, transgender and intersex women.