Shadow Report for the 65th Session of the Committee against Torture (CAT)

7th Periodic Review of the Kingdom of the Netherlands

Torture and other cruel and inhuman or degrading treatment of Lesbian, Gay, Bisexual, Transgender and Intersex persons in the Netherlands

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Joint NGO submission by:

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Key words

Fully informed consent, intersex, sex diversity, transgender, gender identity, gender recognition, sex registration, hate crimes, healthcare, LGBTI, psychological integrity, physical integrity, rights of the child, self-determination, sex characteristics, violence

I. Introduction

1. This shadow report has been compiled on behalf of COC Nederland, Nederlandse organisatie voor seksediversiteit (NNID) and Transgender Netwerk Nederland (TNN). The report serves as a basis for dialogue with the State Party during the 65th Session of CAT in which the 7th Periodic Report (CAT/C/NLD/7) will be considered.
2. The issues brought forward in this submission should be regarded as an addition to question 31 that the Committee Against Torture has formulated in the List of Issues regarding the human rights of intersex people under the Convention against Torture.
3. Despite good human rights standards in law, policies and practice there are still persisting human rights violations under the Convention against Torture against LGBTI people in The Netherlands that urgently need to be addressed. The government needs to specifically act on ongoing laws and practices sustaining torture and ill-treatment of intersex and trans people.
4. Each chapter of this report introduces human rights violations against LGBTI people under the Convention against Torture, describes the steps taken by the government of the Kingdom of the Netherlands, and introduces suggestions for improvements and recommendations to the State Party.

II. Physical and psychological integrity of intersex and transgender people (articles 2, 10, 12, 14 and 16)

Intersex people

5. Intersex people seek protection of the Convention against Torture on the basis of Article 16 of the Convention, and its references to Articles 10, 11, 12, and 13. Article 16 clearly and unambiguously formulates the responsibilities of the Kingdom of the Netherlands when 'other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture […] are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity'.

6. On 22 June 2017, the Kingdom of the Netherlands responded to the 33 questions as set out in the List of Issues, adopted by the 44th session of the Committee[1]. The answer to Question 31 confirms that *'Unnecessary medical and surgical treatments do not in principle constitute good quality care'*. We very much welcome this clear position. In the remainder of this chapter we will demonstrate that, despite the good intentions, the human rights of intersex persons are still institutionally violated by hospitals and health workers.

7. The State Party's response to question 31 of the List of Issues is divided into three paragraphs (188-190). Paragraphs 8-10 respond to the State Party Report, followed by further concerns and evidence regarding violations of physical and psychological integrity of intersex people under articles 2, 10, 12, 14 and 16 of the Convention in paragraphs 11-17.

8. **Par. 188**: Although there is a scientific publication that deals with the 'experimental' nature of the treatment of intersex persons[2], this experimental character cannot be compared with what the Medical Research Act (Human Subjects) understands to be research. The main components of treatment are never based on Evidence Based Medicine or on the results of long-term follow-up research, simply because the necessary data were never collected through research. In this way, the medical treatment of intersex people remains 'experimental' - experimental in the most undesirable sense of the word.

9. **Par. 189**: The reply correctly reflects how the rights of intersex people in theory should be protected by the Netherlands. On several occasions, representatives of the intersex organisations have discussed the recommendations received by the Netherlands within the framework of CEDAW[3], CESCR[4], and UPR[5] at a high policy level with various ministries, including the Ministry of Health. The UN recommendations are based on information broadly comparable to the content of this NGO report. It is therefore remarkable that the Kingdom of the Netherlands appears to have all the necessary information at its disposal, while at the same time failing to comply with what the State is required to do under Article 16 in conjunction with Article 12 of the Convention against Torture. The obvious conclusion is that in the Netherlands *unnecessary medical or surgical treatment aimed at determining the sex of a child is permitted and performed on children and adults who are incapable of giving informed consent.*

10. **Par 190**: If involuntary medical 'normalisation' of intersex persons is permitted, it is also not useful to file a complaint about such treatment. But even if this were possible, the time frame in which a

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1 **The Kingdom of the Netherlands**. Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention pursuant to the optional reporting procedure: Seventh periodic report of States parties due in 2017 - The Netherlands. 22 June 2017.

2 'Surgical techniques for childhood conditions can change long before adult outcomes are known, and experts in surgery have so far been unable to reach a consensus about the best operation. Parents may not realise that they are de facto opting for experimental surgery on their children.' **Liao L-M, Wood D, Creighton SM.** Parental choice on normalising cosmetic genital surgery. BMJ. 2015;351. https://doi.org/10.1136/bmj.h5124

3 **Committee on the Elimination of Discrimination against Women**. Concluding observations on the sixth periodic report of the Netherlands. United Nations, 18 November 2016. Nr. CEDAW/C/NLD/CO/6.

4 **Committee on Economic, Social and Cultural Rights**. Concluding observations on the sixth periodic report of the Netherlands*. United Nations, International Covenant on Economic, Social and Cultural Rights, 6 July 2017. Nr. E/C.12/NLD/CO/6.

5 **Working Group on the Universal Periodic Review**. Draft report of the Working Group on the Universal Periodic Review*: Netherlands. Geneva, Switzerland: United Nations Human Rights Council, 18 May 2017. Nr. A/HRC/WG.6/27/L.13.

complaint could be filed would be too short. In many respects, a 'normalising' treatment, including Intersex Genital Mutilation (IGM), is comparable to Female Genital Mutilation (FGM). There is a good reason why a woman in the Netherlands can file a criminal complaint about FGM until she reaches the age of 38: often the woman cannot or does not dare to file a criminal complaint earlier. This extended period should also apply to intersex people who have undergone 'normalising' medical treatment against their will. Furthermore, we see the possibility of submitting a complaint to the Health Care Inspectorate as disproportionate to the seriousness of what has been done to intersex people. We therefore highly recommend the government to add the unnecessary nonconsensual medical treatment of intersex persons to the Penal Code, equating the level of punishment of the crime with that of FGM.

11. Even before they are born, 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)[6]. There is only limited information available on the results of this type of medical intervention[7]. 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[8].

12. 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[9], information for general practitioners[10], information for parents of new-borns[11] and a letter to the editor of a Dutch newspaper written by two doctors who regularly perform genital surgeries on intersex children[12]. This predict and control method is a violation of the right of self-

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6 **Claahsen-van der Grinten HL, Stikkelbroeck MML, Vulsma 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.

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

8 **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.

9 **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

10 **Claahsen-van der Grinten HL, Stikkelbroeck MML, Vulsma 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.

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

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

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.

13. Health professionals often believe that the sex assignment of intersex children, especially those with XX-chromosomes and Congenital adrenal hyperplasia (CAH), is not an issue[13]. Yet several studies show that about 5 to 15 percent of the children with CAH raised as girls, question the assigned sex[14]. Recent research has shown that five percent of ***all*** intersex children, including those with forms of sex diversity that are usually not recognized at birth, change sex before puberty[15].

14. 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[16]. 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.

15. 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. It is therefore not surprising that the recent intersex study mentioned above showed that the number of participants with psychological problems is 4.3 times higher than in the control group and that the number of participants who attempted suicide is 3.5 times higher than in the control group. The researchers say that in reality the percentage of suicide attempts might be higher because a significant number of respondents refused to answer the question about suicide.

16. It is unknown whether the psychological problems and the high percentage of suicide attempts are symptoms of the DSD diagnoses. That these percentages are also greatly increased in sexually abused children[17], that some medical treatments and studies (including a test described as 'clitoral

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[13] 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.

[14] **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. https://doi.org/10.1016/j.jpedsurg.2015.10.004.
de Vries A, Doreleijers T, Cohen-Kettenis P. Disorders of sex development and gender identity outcome in adolescence and adulthood: understanding gender identity development and its clinical implications. Pediatric Endocrinology Reviews. 2007;4(4):343-351.
Falhammar H, Claahsen-van der Grinten HL, Reisch N, Slowikowska-Hilczer J, Nordenstrom A, Roehle R, et al. Health status in 1040 adults with disorders of sex development (DSD): a European multicenter study. Endocrine Connections. 2018. https://doi.org/10.1530/ec-18-0031

[15] **Falhammar H, Claahsen-van der Grinten HL, Reisch N, Slowikowska-Hilczer J, Nordenstrom A, Roehle R, et al.** Health status in 1040 adults with disorders of sex development (DSD): a European multicenter study. Endocrine Connections. 2018. https://doi.org/10.1530/ec-18-0031

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

[17] **Browne A, Finkelhor D**. Impact of child sexual abuse: A review of the research. Psychological Bulletin. 1986;99(1):66. https://doi.org/10.1037//0033-2909.99.1.66. 4.
Cook A, Spinazzola J, Ford J, Lanktree C, Blaustein M, Cloitre M, et al. Complex trauma in children and adolescents. Psychiatric annals. 2005;35(5):390-398. https://doi.org/10.3928/00485713-20050501-05.

sensory testing and vibratory sensory testing'[18]) for intersex children can be classified as sexual abuse[19], that scientists and agencies consider the medical treatment undergone by a group of intersex children to be comparable to Female Genital Mutilation (FGM)[20] and that a growing number of intersex people claim to have experienced medical attention as (sexual) abuse[21] [2, 12, 18, 20, 25], suggests that medical attention is the cause and not the diagnosis.

17. The government should 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") and implement 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").

Transgender people

18. 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

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Fergusson DM, Horwood LJ, Lynskey MT. Childhood Sexual Abuse and Psychiatric Disorder in Young Adulthood: II. Psychiatric Outcomes of Childhood Sexual Abuse. Journal of the American Academy of Child & Adolescent Psychiatry. 1996;35(10):1365-1374. https://doi.org/10.1097/00004583-199610000-00024

[18] **Yang J, Felsen D, Poppas DP**. Nerve sparing ventral clitoroplasty: analysis of clitoral sensitivity and viability. The Journal of urology. 2007;178(4):1598-1601. https://doi.org/10.1016/j.juro.2007.05.097

[19] **Alexander T**. The Medical Management of Intersexed Children: An Analogue for Childhood Sexual Abuse Rohnert Park, CA, USA: Intersex Society of North America; 1997. URL: http://www.isna.org/articles/analog.
Dreger AD. Rejecting the Tranquilizing Drug of Gradualism in Intersex Care [Blog]. 2015 [bewerkt 21 november 2015; geraadpleegd 24 november 2015]. URL: http://www.alicedreger.com/DSD_human_rights.
Jones T, Hart B, Carpenter M, Ansara G, Leonard W, Lucke J. Intersex: Stories and Statistics from Australia: Open Book Publishers; 2016. https://doi.org/10.11647/OBP.0089 .
Knight K, Tamar-Mattis S. "I want to be like nature made me": Medically Unnecessary Surgeries on Intersex Children in the US. New York, NY, USA: Human Rights Watch / interAct, July 2017. Nr. 978-1-6231-35027.
Wiesemann C. Ethical Guidelines for the Clinical Management of Intersex. Sexual Development. 2010;4(4-5):300-303. https://doi.org/10.1159/000316232.

[20] **Dreger AD**. "Ambiguous Sex"—or Ambivalent Medicine?: Ethical Issues in the Treatment of Intersexuality. Hastings Center Report. 1998;28(3):24-35. https://doi.org/10.2307/3528648.
Earp BD, Steinfeld R. Genital Autonomy and Sexual Well-being. Current Sexual Health Reports. 2018;10(1):7-17. https://doi.org/10.1007/s11930-018-0141-x.
Ehrenreich N, Barr M. Intersex Surgery, Female Genital Cutting, and the Selective Condemnation of "Cultural Practices". Harvard Civil Rights-Civil Liberties Law Review. 2005;40:71.
Fraser S, Reisel D. Constructing the female body: using female genital mutilation law to address genital-normalizing surgery on intersex children in the United States. International Journal of Human Rights in Healthcare. 2016;9(1). https://doi.org/10.1108/IJHRH-05-2015-0014.
Gleichstellungs- und Frauenministerinnen und -minister, -senatorinnen und -senatoren der Länder (GFMK), redactie Beschlüsse. 24. Konferenz der Gleichstellungs- und Frauenministerinnen und -minister, -senatorinnen und -senatoren der Länder (GFMK); 2014 1-2 oktober; Wiesbaden, Deutschland: Hessisches Ministerium für Soziales und Integration . G**reen FJ**. From clitoridectomies to 'designer vaginas': The medical construction of heteronormative female bodies and sexuality through female genital cutting. Sexualities, Evolution & Gender. 2005;7(2):153-187. https://doi.org/10.1080/14616660500200223.
Office of the United Nations High Commisioner for Human Rights. Good practices and major challenges in preventing and eliminating female genital mutilation - Report of the Office of the United Nations High Commissioner for Human Rights. United Nations - General Assembly, 2015. Rapport Nr. A/HRC/29/20.
Pūras D. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. United Nations, General Assembly, 4 april 2016. Nr. A/HRC/32/33.

[21] **Blair K**. When Doctors Get It Wrong. Narrative Inquiry in Bioethics. 2015;5(2):89-92. https://doi.org/10.1353/nib.2015.0029.
Frader JE. A Pediatrician's View. Narrative Inquiry in Bioethics. 2015;5(2):139-142. https://doi.org/10.1353/nib.2015.0040.
Meoded Danon L. Time matters for intersex bodies: Between socio-medical time and somatic time. Social Science & Medicine. 2018;208:89-97. https://doi.org/10.1016/j.socscimed.2018.05.019.
Monro S, Crocetti D, Yeadon-Lee T, Garland F, Travis M. Intersex, Variations of Sex Characteristics, and DSD: The Need for Change. Huddersfield, UK: University of Huddersfield, October 2017. Nr. 978-1-86218-151-9.
Viloria H. Born both: an intersex life. New York, NY, USA: Hachette Books; 2017.

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[22] 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.

19. 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.[23] 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.

20. Pathologization of trans 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.

21. Waiting lists for access to gender affirmative health care have increased dramatically. The largest gender affirmative health care provider, VU Medical Center in Amsterdam, announced to not give any further indications of waiting lists as they have not been able to live up to earlier expectations. Patients now have to wait for more than two years to even be welcome for an intake.

Recommendations:

a) Abolish the diagnosis genderdyshoria for prepubertal children and implement further mechanisms to depathologize the sex and gender affirmative health care needs of intersex people and transgender people
b) 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 of the person concerned.
c) Implement mechanisms to protect intersex children against experimental, unnecessary, and unproven medical treatments.
d) Take immediate measures to solve the waiting lists for access to gender affirmative healthcare.

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[22] For example: Human Rights and Gender Identity. Commissioner for Human Rights, Council of Europe, 2009, p.18.
[23] E.M. van den Boom, *Onderzoek transgenderzorg Nederland.* Amsterdam: Stichting Transvisie, 2016, p. 17.

III. Legal Gender Recognition (article 2)

22. 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, without any legislative, administrative or judicial obstacles interfering with the psychological well-being of the individual.

23. 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.

24. 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.

25. However, the government also acknowledges that this can only be done, provided one can submit an expert statement in support of a request, by which there are still unnecessary legislative and administrative obstacle in place that prevent full self-determination and psychical integrity of transgender and intersex people.

26. The NGO's hold that the by law prescribed expert statement is in contradiction with article 2 of CAT 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.

27. 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.

28. 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.

29. 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 court decision) 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

IV. Redress and compensation for violations of the rights of intersex persons (article 14)

30. 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, normalizing treatment of intersex people have gone unpunished, no redress and compensation have been awarded.

31. NNID has testimonies from parents of intersex children showing that there is still no rights-based medical protocol for dealing with intersex children. A mother complained that she had consented to take a biopt from a testis of her child and that during this minor surgery she was called by the surgeon that the entire testis had been removed during the biopsy and that she now had to decide within minutes whether she wanted to give permission to remove the second testis as well. The surgeon stated that the testis was so small that it had disappeared completely by taking the biopsy. Another mother complained that when she refused to consent to 'normalising' treatment, the doctors accused her of denying her child the appropriate care, and that she should see a psychiatrist.

32. In a television broadcast about intersex, a pediatric endocrinologist said: "I think that all decisions must be taken in a balanced way. Yes, you have to be cautious with operations but no surgery all, have we achieved our goal then?". To the question of whether it is not better to wait with surgery on the child's sex until the child can indicate for himself or herself whether he or she feels like a man

or a woman, a pediatric urologist replies: "I do have the impression that I would neglect many children who are very happy that they have had surgery at a very young age and grow up as a completely normal child".[24]

33. 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.

Recommendations:

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

j) Include into the Dutch Penal Code unnecessary nonconsensual medical treatment of intersex persons, equating the level of punishment of the crime with that of FGM.

V. Hate crimes against LGBTI people (article 12)

34. Many LGBTI people in the Netherlands encounter hate crimes, but only in very few cases this results in prosecution and/or conviction of the perpetrators. About seven in ten LGBTI persons in The Netherlands experience discriminatory physical or verbal violence because of their identity.[25] Specific research among transgender persons in the Netherlands shows that 43 percent experienced violence in the last 12 months[26]. Thus, more than seven hundred thousand LGBTI people in the Netherlands experience violence related to their identity.[27] In 2014 1403 cases of hate crimes were reported to the police, up from 380 in 2008.[28] 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.[29] 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.[30] Thus, whereas hundreds of thousands LGBTI persons in the Netherlands experience hate crimes and discrimination, only about 10 perpetrators are convicted each year.

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[24] **Joosten O**. Iedere week wordt er in Nederland een kindje geboren met een onduidelijk geslacht [Brandpunt]. Hilversum, Nederland: KRO/NCRV; 2016 [geraadpleegd 22 mei 2016]. 26 april 2016. URL: http://brandpunt.kro-ncrv.nl/brandpunt/iedere-week-wordt-er-in-nederland-een-kindje-geboren-met-een-onduidelijk-geslacht/.

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

[26] Veilig, zolang men het niet merkt… Transgender Netwerk Nederland, October 2015, p. 3.

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

[28] Discriminatiecijfers politie 2014, Verwey-Jonker Instituut, 2014. Commissioned by the Dutch government.

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

[30] Parliamentary parliament document 30 950, 75, appendix p.3

35. 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.

36. In its Security Agenda 2015-2018[31] 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. Dutch Parliament has adopted a motion that calls upon the government to include an LGBTI specific action plan into the Security Agenda 2019-2022. We urge the Dutch government to draft an action program for countering hate crimes against LGBTI, including indicators for success.

Recommendation:

k) Issue an action program for countering hate crime against LGBTI, including indicators for success which includes an agreement with police and public prosecutor to increase the number of perpetrators that are prosecuted for hate crimes against LGBTI.

[31] Veiligheidsagenda 2015-2018, p.11.

VI. Summary of recommendations

We encourage the Committee against Torture to make the following recommendations to the Kingdom of the Netherlands:

a) Abolish the diagnosis genderdyshoria for prepubertal children and implement further mechanisms to depathologize the sex and gender affirmative health care needs of intersex people and transgender people

b) 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 of the person concerned.

c) Implement mechanisms to protect intersex children against experimental, unnecessary, and unproven medical treatments.

d) Take immediate measures to solve the waiting lists for access to gender affirmative healthcare.

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

j) Include into the Dutch Penal Code unnecessary nonconsensual medical treatment of intersex persons, equating the level of punishment of the crime with that of FGM.

k) Issue an action program for countering hate crime against LGBTI, including indicators for success which includes an agreement with police and public prosecutor to increase the number of perpetrators that are prosecuted for hate crimes against LGBTI.

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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