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Key words

Lesbian, gay, bisexual, transgender, intersex, sexual orientation, gender identity and expression, sex characteristics, discrimination, legal rights, violence, hate crimes, youth, education, healthcare, inhuman treatment

Executive Summary

1. During the third review in 2017, the Netherlands received five recommendations directly relating to sexual orientation, gender identity and expression, and sex characteristics (SOGIESC):
 - a) *131.98 Continue its efforts to eliminate all forms of discrimination, notably against lesbian, gay, bisexual, transgender and intersex persons and against women in the labour market (France);*
 - b) *131.99 Implement measures to protect intersex persons from discrimination (Australia);*
 - c) *131.100 Guarantee access to legal gender recognition for both intersex and transgender people of all ages, without legal, administrative or financial barriers (Israel);*
 - d) *131.136 Ensure comprehensive sexuality education is integrated into the national school curriculum, including on topics such as sexual diversity, sexual rights and gender equality (Belgium);*
 - e) *131.138 Integrate human rights education into the national school curriculum, provide sufficient resources for 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 (Slovenia).*
2. Since the previous review, Dutch parliament and government took important steps to further the human rights standards and policies for the protection of people based on their SOGIESC. The government should be commended for its adherence to the protection and emancipation of people based on sexual orientation. Much is however still to be done to equally guarantee the human rights and protection of persons with diverse gender identities or intersex people.
3. There remains scope for improvement in the protection of lesbian, gay, bisexual, trans and intersex (LGBTI) people from discrimination and violence. Problems which could be tackled by an even stronger commitment of the government to the obligations it committed itself to under international human rights standards.
4. This joint NGO report gives further recommendations to the Netherlands on how to follow-up on its previous commitment and fill the gaps in human rights standards and policies based on SOGIESC. It will do so on the following themes:
 - Discrimination and legal rights;
 - Safety and violence;
 - Youth and education;
 - Healthcare;
 - Inhuman treatment.

I. Discrimination and legal rights

5. In the Netherlands, there are several anti-discrimination laws and policies in place that protect LGBTI people against discrimination. As of 1 November 2019, in the *General Equal Treatment Act* ('Awgb') it has been explicated that the term 'sex' includes sex characteristics, gender identity and gender expression, and therefore, that people may not be discriminated against on these grounds.ⁱ The Act protects people against discrimination at work, in education, housing, health care and (social) services. With this act, the recommendation that the Dutch government received in the previous UPR cycle to implement measures to protect intersex persons from discrimination (131.99, Australia) has been partially implemented. Furthermore, in March 2022, a large majority of the Dutch House of Representatives voted to include sexual orientation and disability human rights in the Constitution.ⁱⁱ This constitutional amendment will come into effect when the Senate also passes the bill later this year.
6. Despite relatively good anti-discrimination standards in law and policies, there are gaps to be filled in order to guarantee equality and non-discrimination of people based on SOGIESC. According to a 2020 report,ⁱⁱⁱ LGB people in the Netherlands experience more discrimination than heterosexual people (47% versus 37%) and they experience this in various aspect of life, such as in public space, at school, and at work. They also experience significantly more discrimination in the form of negative treatment and sexual harassment. European research^{iv} from 2020 shows that in the Netherlands, between 30% (bisexual men) and 34% (gay men) experienced discrimination based on LGBTI in the 12 months before the survey. For transgender people this was 52% and for intersex people 56%.

Discrimination in the labour market, including sex work

7. One domain in which LGBTI people face discrimination, is the labour market. In the previous UPR cycle, the Netherlands received a recommendation (131.98, France) to continue its efforts to eliminate all forms of discrimination, notably against LGBTI people and against women, in the labour market. The government has responded that various measures to combat discrimination in the labour market are already in place. However, these measures seem insufficient: according to a 2020 report^v there is an increase, compared to 2013, of discrimination of LGB people at the workplace.
8. Sex workers are particularly vulnerable in the Netherlands. Since legalisation of sex work, legal workplaces have been diminishing.^{vi} Proposed legislation^{vii} to regulate sex work will create a further divide between permitted and unpermitted work, by explicitly criminalising people who assist sex workers who work without a permit. Especially trans sex workers who are temporarily or do not have any residence status in the Netherlands or EU will be hurt by this, because they cannot apply for a permit.^{viii} Not being able to get a permit and having anyone who supports their livelihood being criminalized will endanger their health and safety, as reporting health problems, violence, mistreatment and trafficking with police or health services puts their livelihood at risk.^{ix}

Legal gender recognition

9. Another domain in which intersex and transgender people experience discrimination, is in legal gender recognition. To this end, the Netherlands received the recommendation in the third periodic review

(131.100, Israel) to guarantee access to legal gender recognition for both intersex and transgender people of all ages, without legal, administrative or financial barriers. However, this recommendation has not been fully implemented yet.

10. Currently an expert letter from a medical or mental health expert in gender dysphoria is needed to access legal gender recognition (LGR). The current minimum age for LGR is sixteen. Evaluation of this legislation has led to a new proposal, which is currently under review in Parliament. If approved, the expert letter as a condition to access LGR will be abolished, in favor of self-declaration at the civil registry.
11. In 2014, the Dutch government abolished the court procedure for adults seeking LGR. However, parents or caretakers of children under the age of 16, who wish to have their gender legally affirmed, will still have to go to court to access LGR.^x According to the Dutch government, a court procedure is in the best interest of the child.^{xi} However, the UN Committee on the Rights of the Child has called on states to establish ‘accessible and non-discriminatory legal gender recognition procedures,’^{xii} and also the Dutch Children’s Ombudsman has stated that they are not convinced that a court procedure is in the best interest of children.^{xiii}
12. Moreover, legislation for LGR is only accessible for changing the gender registration from male to female or vice versa. Since 2018, people who do not wish to be registered as either, went to court to request legal recognition of their gender. In 2018, the court stated that the government has an obligation to create legislation for legal gender recognition for people who wish to be recognized as neither male nor female.^{xiv} The High Council considered prejudicial questions in 2022 and stated that although new developments are at present bringing legal gender recognition closer for non-binary people, the lower courts do have a responsibility to make decisions in individual cases until legislation is available.^{xv} The Independent Expert on sexual orientation and gender identity endorses that States have an obligation to ‘recognize non-binary identities’ in line with the recommendation issued in 2015 by the United Nations High Commissioner for Human Rights.^{xvi}

Multi-parenthood

13. More and more children grow up in families with three or four parents, for example with two mothers and a father, or with two mothers and two fathers. Currently, the law does not recognise third or fourth parents. This has various negative consequences for the child, for example for care leave and inheritance law.^{xvii}
14. Children have the right to a good legal relationship with all their parents. In 2016, the State Committee ‘Parenthood Reassessment’^{xviii} advised the government to introduce a multi-parenthood and multi-parent authority law. There must also be a good surrogacy law to optimally protect the position of the child, surrogate mother and intended parents. The State Committee already called on the government in 2016 to write such a law. So far, this has not happened. The government has now promised to provide more clarity about the way in which multiple parenthood will be introduced in the Netherlands before the summer of 2022.^{xix}

Recommendation:

- a) Implement effective legislative, administrative, judicial and other measures to ensure effective transition leave for transgender people, comparable to maternity leave
- b) Decriminalize sex work
- c) Guarantee access to health services, justice and redress for sex workers and victims of trafficking, including migrant and trans sex workers
- d) 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, and enable every individual to alter the gender as registered at the civil registry to undetermined or unregistered
- e) Implement effective legislative, administrative, judicial and other measures to support multi-parenthood and multi-parent authority

II. Safety and violence

15. Many LGBTI people in the Netherlands encounter hate crimes, but only in very few cases does this result in prosecution and/or conviction of the perpetrators.^{xx} One in five LGBT people has encountered LGBT-related violence,^{xxi} and almost half of the transgender women in the Netherlands (46%) experienced violence in the year prior to a 2015 study.^{xxii} According to the 2020 EU LGBTI Survey,^{xxiii} one in ten LGB people in the Netherlands has been physically attacked in the five-year period before the research. The same report shows that 22% of intersex people in Europe experienced physical and/or sexual attacks and 38% experienced violent in-person threats.
16. Around one fifth of the LGBTI people who have experienced physical or sexual attacks reported this to the police, and only one in ten filed a report with an anti-discrimination facility.^{xxiv} 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 (32% versus 29%). 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.^{xxv} It is worrying that with the high instances of violence against LGBTI people reported in the above study, there is severe underreporting by LGBT people, and even no reporting by intersex people, of such cases. This casts doubt on the accessibility of the anti-discrimination facilities, or the actual follow-up after reporting.
17. The government of the Netherlands was recommended to continue to combat hate crimes against vulnerable groups (131.85 Pakistan) and issue a national action plan for countering discrimination as well as hate crimes (131.32 Sweden) in the third UPR cycle. While the government has accepted this recommendation, it has not taken all necessary measures to protect LGBTI people from threats and violence. 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 people.^{xxvi} However, this Action Plan does not provide new measures, nor measures that are far-reaching enough.^{xxvii}

LGBTI asylum seekers

18. In 2018, COC published a research report assessing LGBTI asylum applications in the Netherlands.^{xxviii} The main outcome of the research was that Dutch policy and practice regarding LGBTI asylum claims still rely on stereotypes. Following this, the Dutch government issued new Working Instructions for the Immigration and Naturalization Services (“IND”) regarding LGBTI asylum-policy.^{xxix} However, in 2019 COC noticed 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.^{xxx}
19. 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 people in asylum centres, amongst others the incident of a lesbian couple who were attacked with boiling water in 2020.^{xxxi}
20. In November 2020, Dutch Parliament passed the motion Groothuizen *cs*,^{xxxii} which called for an Action Plan to create safer reception conditions for LGBTI and converted asylum seekers. A resulting study^{xxxiii} showed that LGBTI asylum seekers experience additional vulnerabilities in reception centres, specifically those who might be recognizable such as trans people. They experience hostile reactions, discrimination and violence. Factors such as a lack of privacy, traumatic experiences and having to share living spaces with homophobic and transphobic fellow residents, lead to feelings of unsafety and incidents. Specific housing for LGBTI asylum seekers, which is available in some reception centres, leads to an increased sense of safety.
21. The response of staff working at the reception centres to (feelings of) unsafety is inconsistent, and seem to depend on the personal interests and opinions of staff members. Some respondents in the research indicated they felt staff handled the situation correctly, others were not. In those cases, the willingness to report unsafety decreased, and feelings of unsafety increased in both the victim and other LGBTI residents.^{xxxiv}
22. A 2021 report^{xxxv} on transgender asylum seekers provides a number of recommendations to counter shortcomings in the preparation and proceeding of trans refugees’ asylum requests. These are based on the findings of a severe lack of attention and consideration for trans-specific themes. National and international stakeholders possess inadequate tools to consider trans refugees’ asylum cases. Trans refugees are met with a lack of country specific knowledge and interpretation of circumstances, as well as insufficient consideration of trans peoples lived experience and intersecting issues, due to the current case-based approach on isolated facts by the IND.
23. 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, are asylum seekers eligible to receive treatment.^{xxxvi} Without proof, they need to wait to get residence status before they can seek gender affirmative health care, which is likely to take over 3 years. This leaves them severely vulnerable for mental health crises.

24. 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.^{xxxvii}

Recommendations:

- f) Optimize law, policy and practice to lower hate crime rates against LGBTI and promote a higher percentage of perpetrators being prosecuted and convicted
- g) Do not rely on stereotypes in assessing asylum claims of LGBTI people, and train IND personnel in avoiding the use of stereotypes and improve policies for assessing these claims
- h) Guarantee the safety of LGBTI asylum seekers by putting the Action Plan into practice and establishing evaluation mechanisms to assess the effectiveness of the proposed actions, and by creating housing specifically aimed at LGBTI asylum seekers
- i) Guarantee a trans-specific approach towards transgender refugees' asylum procedures
- j) 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
- k) Guarantee access to gender recognition for transgender and intersex asylum seekers based on self-determination during the asylum procedure.

III. Youth and education

25. The Dutch governments commits itself to improve the situation of LGBTI students in primary and secondary schools. To this end, the key targets for education were adjusted in 2012; since then, schools are required to include sexual diversity in their programs.^{xxxviii} Since 2021, all schools are also legally obliged to ensure safety and acceptance of LGBTI students and staff in the classroom, according to the new law on citizenship education.^{xxxix}

26. However, many LGBTI students face discrimination and bullying in school. A Dutch newspaper^{xl} reported in 2021 that an orthodox Protestant Christian school had locked up students and forced them to come out to their parents. Research^{xli} shows that 1 in 5 conservative Protestant Christian schools explicitly rejects homosexuality. It also shows that these schools do not accept sexual, gender and sex diversity and have strict rules that define how male and female students should behave. Most of these schools use mandatory 'identity agreements' that parents and students must sign in which sexual, gender and sex diversity are rejected. Although motion was passed in Parliament to end these discriminatory practices,^{xlii} this, as well as compliance with the mandated attention to respecting sexual diversity, is hampered by Article 23 of the Dutch constitution that governs the freedom of education based on religion, belief or vision.

27. LGBTI students are bullied much more often than other students, a 2021 study^{xliii} finds: about a quarter to a third of LGBTI students are bullied, compared to 13 percent of heterosexual students. Also teachers participate in bullying: while 14 percent of the bullied heterosexual students say that the bullying behavior comes from teachers, for LGBTI students this is 24 percent. Furthermore, LGBTI students are

almost twice as likely to be victims of violence by school staff: nearly half (47,1%) of the students participating in the research^{xliv} reports that teachers and other school staff did not intervene when confronted with homophobic remarks. These findings are further supported by a 2021 report by the Netherlands Institute for Social Research^{xlv} and the 2020-2021 National Safety Monitor.^{xlvi}

28. There is a causality between the bullying and discrimination that LGBT-youth experience, and higher suicide rates.^{xlvii} 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). Although there is no country specific data on the suicide rates of intersex youth, a study on intersex people in Europe concluded they were almost 4 times more likely than the average population to attempt suicide.^{xlviii}
29. Improvement of the situation of LGBTI youth in school is thus still urgently needed. While the Dutch government has accepted the recommendation (131.136, Belgium) during the third UPR cycle to ensure integration of comprehensive sexuality, gender, and sex education into the national school curriculum, the Inspectorate of Education found this has not yet been implemented: schools and teachers lack knowledge, and the government does not provide clear guidelines; schools have not developed a vision or concrete goals for implementing the key targets; and they do not keep track of the results^{xlix}.
30. While the key targets for education also apply to schools in the Caribbean Netherlands (Bonaire, Sint Eustatius and Saba),^l control on compliance is minimal. Educational material that is available, is not always usable in the Caribbean Netherlands, and adaptation of this material for the Caribbean Netherlands is not self-evident.^{li}
31. The recommendation (131.138, Slovenia), made during the third UPR cycle, to ensure that sexual, gender, and sex diversity is included in teachers' academies, has also not been fully implemented: it is currently not obligatory in university level teachers' academies ("ulo's") and first-degree teachers academies.

Recommendations:

- l) Guarantee the improvement and implementation of the key targets for education on sexual, gender, and sex diversity in all schools
- m) Evaluate Article 23 of the Dutch constitution on its (potential) harmful effects for LGBTI students
- n) Ensure that the Inspectorate of Education monitors laws and regulations closely and takes appropriate action in case of non-compliance by schools
- o) Implement measures to end rejection of LGBTI students in schools and to guarantee the acceptance of LGBTI students in the educational system
- p) Include promotion of tolerance and non-discrimination of LGBTI structurally in the curriculum of all teachers' academies

IV. Healthcare

32. In the Netherlands, waiting lists for access to medical gender affirmative health care are long. Efforts to reduce waiting lists since 2018 have not resulted in any significant reduction.^{lii} Waiting lists have even increased, from 6 months in 2016, to 3 years now. The increase in number of mental health providers and further decentralization of trans health care,^{liii} could not keep up with the growing need for gender affirmative care. There are currently no plans nor budgets to step up the effort to reduce waiting lists.
33. Long waiting lists have a negative effect on mental health and induce people to self-medice hormonal replacement therapy.^{liv} There are at present no signs that this effect has diminished among the people who have to wait for gender affirmative treatment. The despair about the current situation has led to the first ever public protests by trans people and allies to address this issue.^{lv}
34. There are no plans to follow-up on the depathologization of gender affirmative care within the International Classification of Diseases 10 (ICD-11)^{lvi} in health care guidelines before 2023.^{lvii} Mental health providers in the Dutch gender affirmative care have to focus on determining a diagnosis for gender dysphoria (DSM-V), which prevents them from providing the mental health support for trans people who need this, despite the national health care institute recognizing that providing gender affirmative care without a mental health diagnosis, in accordance with ICD-11, is equally covered by health insurance since 2021.^{lviii}

Recommendations:

- q) Take all necessary measures to significantly reduce waiting lists for transgender health care
- r) Implement mechanisms to depathologize transgender people's gender affirmative health care needs

V. Inhuman treatment

35. The government of the Netherlands received the recommendation ([131.99, Australia](#)) to implement measures to protect intersex persons from discrimination. This recommendation has partially been implemented. However, intersex people in the Netherlands still suffer inhuman treatment.
36. The most common form of discrimination of intersex children results in non-consensual unnecessary medical interventions to adjust the sex characteristics of intersex children. Medical and surgical treatment of intersex children 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 through medical treatments.^{lix} Consequently, all intersex children in the Netherlands are at risk of undergoing non-necessary medical interventions and intrusive and irreversible treatments to adjust their sex characteristics to fit societal norms of what those sex characteristics should look like.^{lx} These treatments include surgical interventions to adjust the appearance of external sex characteristics and to remove internal reproductive organs that are not in line with the assigned sex (castration), hormone treatments, and psychological treatments to enforce and strengthen a gender identity with the assigned sex characteristics.^{lxi}

37. A 2020 study^{lxii} shows that 49% of Dutch intersex people underwent medical treatment to modify their sex characteristics. For two thirds, this occurred before they were 18 years old. 61% did not provide informed consent themselves, nor was it provided by their parents/caretakers. This is illustrated by a Dutch urologist, who said that some surgical procedures take place approximately one year after birth.^{lxiii} Naturally, these children cannot provide consent for these unnecessary interventions. The ‘*predict and control*’ method therefore violates the right of self-determination, bodily integrity, and the right to the highest attainable standard of physical and mental health.
38. Health professionals often believe that sex assignment through the medical and surgical intervention of intersex children is not an issue.^{lxiv} However, recent European research has shown that five per cent of all intersex children change their assigned gender, including those with forms of sex diversity that are not recognized at birth.^{lxv} It is impossible to predict which children will belong to the group that will reject the assigned sex. Therefore, these unnecessary treatments violate all intersex children’s rights.^{lxvi}
39. Some relatively common surgeries have a 5-70 % chance of failure.^{lxvii} Another study found that 25% of complications for that type of surgery could not be corrected.^{lxviii} Such research has not changed medical practice.^{lxix} Intersex people often need life-long medical care because of unnecessary medical treatments. A recent European intersex study showed that the number of participants with psychological problems is 4.3 times higher than the control group. The number of participants who attempted suicide is 3.5 times higher than the control group.^{lxx} NNID regularly receives reports from intersex people who require psychosocial and counselling support independently from settings in which they have been treated inhumanely.

Recommendations:

- s) Implement effective legislative, administrative, judicial and other measures to ensure that no child or adult is subjected to unnecessary medical intervention without prior, personal, free and fully informed consent
- t) Ensure that human rights violations against intersex people are investigated and alleged perpetrators prosecuted, and that victims of such violations have access to effective remedy, including redress and compensation

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