



NGO report

on the report by the Dutch government on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)

Joint NGO submission by:

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PREFACE

This NGO 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 between representatives of the European part of the Kingdom of the Netherlands and GREVIO, the Group of Experts on action against violence against women and domestic violence, about the first baseline evaluation of the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) in the European part of the Kingdom of the Netherlands. The report aims to give a concise overview with respect to how lesbian, gay, bisexual, trans and intersex and gender non-conforming persons are in very specific ways affected by violence against women and gender-based violence.

Amsterdam, 9 November 2018

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I. INTRODUCTION

As the UN Committee on the Elimination of all Forms of Discrimination Against Women (CEDAW) states in its General Recommendation 35, discrimination and violence against women are inextricably linked to other factors in their lives, including - among others - being lesbian, bisexual, transgender or intersex. 'Because women experience varying and intersecting forms of discrimination, which have an aggravating negative impact, the Committee acknowledges that gender-based violence may affect some women to different degrees, or in different ways, meaning that appropriate legal and policy responses are needed.'

This report highlights how gender-based violence affects lesbian, gay, bisexual, transgender, intersex and gender non-conforming persons (LGBTI) in Dutch society because of the intersection between gender and sexual orientation, gender identity and expression, and sex characteristics (SOGIESC).¹ Violence against LGBTI is of a structural nature and manifests itself in many different ways affecting different groups within LGBTI differently. The underlying causes are however the same and are rooted in pertaining normative definitions of gender in society. These are reflected in norms, roles, stigmata and stereotypes about men and women, their expected behaviour, gender expression and how they should present their bodies, sexual behaviour and attitudes, education and employment choices.

These lead to gender conformism, suppression of identities and aggression towards people transgressing these gender norms, such as LGBTI. Bullying in schools and on the workfloor, online violence and violence in public spaces as well as domestic violence against LGBTI people harm their mental and physical health, lead to gender conformism and internalised lesbo-, homo-, bi-, trans- or interphobia. Higher than average suicide rates, early school dropout rates and significantly higher risk of homelessness are direct indicators of the detrimental effects of gender-based violence on LGBTI people. Gender norms implemented in laws, policies and practices of implementation violate the right to self-determination, integrity of the body, adequate health care and freedom from discrimination. Binary gender registration systems force people to register in a gender that they do not identify with being put at risk of exposure in public on a daily basis. Medical norms of sex ('boy' or 'girl') lead to medically unnecessary 'normalising' surgeries on intersex babies and children without their consent with life-lasting mental and physical consequences.

In its report the government highlights its support for and policy towards equal rights for LGBTI. COC, TNN and NNID welcome support to LGBTI organisations and alliances addressing gender diversity and norms in society and its priority of social acceptance and safety, and combating gender stereotypes and roles. We urge the government however to step up their LGBTI human rights commitment by making explicit commitments to guarantee better protection against the specific forms of gender-based violence that affect LGBTI people in the Netherlands and implementing these through targeted responses to the needs of different groups as named in this report: trans and intersex youth and adults, LGBTI asylum persons, in particular trans persons, and lesbian and bisexual women.

¹ For definitions of the key terms used we refer to <https://www.unfe.org/definitions/> and <http://yogyakartaprinciples.org/principles-en/> .

SUMMARY OF RECOMMENDATIONS

INTERSEX

- i) Incorporate intersex in the existing LGBT monitor, and facilitate data collection on the societal norms on intersex, and the well-being of intersex persons.
- ii) Start a procedure to ensure the right to fair and adequate compensation and rehabilitation for victims of unnecessary intersex treatments.
- iii) Add non-consensual intersex treatments of intersex persons (including children) to the Dutch Penal Code, and equate the level of punishment of the crime with that of FGM.

TRANSGENDER

- iv) Conduct research on child abuse among transgender and gender non-conforming children.
- v) In the interest of the child and to protect them from harm and abuse, legal gender recognition should be made accessible to children under the age of 16 in a quick, transparent and accessible way.
- vi) Address domestic violence experienced by trans people with an action program that includes among other things regular monitoring, actions to make trans people report domestic violence and raising transgender inclusivity within the organisations supporting victims of domestic violence.
- vii) Create sufficient safe licensed work spaces for transgender sex workers.
- viii) Create policies that contribute to safe reporting of violence by transgender sex workers, also for those who work unlicensed.

ASYLUM

- ix) Immigration authorities (IND) should implement the updated Dutch asylum policy based on the right to self-determination and increase LGBTI sensitivity and awareness of IND staff
- x) Dutch government should guarantee LGBTI asylum seekers a prejudice and stereotype free judgment of their asylum application, taking into account evidence provided by their partners
- xi) Asylum requests by trans people should be regarded as gender related asylum request and take into account that the risk of ill treatment is far more common than uncommon for transgender asylum seekers.
- xii) Continuation of gender affirming treatments for transgender refugees needs to be guaranteed when they receive refugee status and residence in The Netherlands.
- xiii) Asylum housing authorities (COA) should increase LGBTI sensitivity and awareness of their staff and monitor safety of LGBTI regularly, and expand availability of LGBTI-housing units
- xiv) COA should implement a safety policy that ensures better information available on the reporting mechanism, a safety contact person, follow up or sanctioning of perpetrators and regrouping people based on being LGBTI

VIOLENCE AND HATE CRIME AGAINST LGBTI

- xv) 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.
- xvi) Develop a targeted approach, such as lesbian, bisexual and trans women, to address the specific types of violence against them, provide more adequate victim support and increase reporting among these groups
- xvii) Include a specific hate crime in the Penal Code setting higher maximum penalties for hate-motivated crimes.

II. INTERSEX

INTERSEX FUNDAMENTAL RIGHTS

(ARTICLES 2, 3, 4, 8, 10 AND 11)

From a very young age intersex persons are confronted with the impact of binary sex stereotypes and the notions of what a typical male or female body should look like, according to society, health professionals and parents. Intersex people face violence related to attempts to make their bodies conform to these notions and lack adequate government protection against this violence and discrimination.

In chapter I.1. of their Baseline Report², the Dutch government stresses the importance of the fundamental rights for LGBTI persons, because their gender equality policy is aimed at equal treatment and strengthening the position of both women and LGBTI people, which is their interpretation of the scope of the Convention and definitions of the Convention. However, in the following chapters of the Baseline Report, intersex is only mentioned as *part* of LGBTI, but the processes to pursue emancipation and equality for intersex persons are not made substantial. In chapter II.3 (and partially in chapter II.2.6), the Dutch government states that they conducted a 'LGBTI monitor', however the monitor only focuses on the situation of LGBT people, and intersex people are not taken into account³.

In respect to article 11 of the Convention and the statement of the Dutch government in the Baseline report that LGBTI rights are part of the Convention, we recommend that the Dutch government includes intersex as substantial subject in future research on LGBTI rights, and accommodates more research on intersex issues as separate subject, comparable with the research supported by the Dutch government on transgender issues⁴.

VIOLENCE AGAINST INTERSEX CHILDREN

(ARTICLES 38, 39 AND 46)

Violence against intersex persons starts at their very birth, when 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. Health professionals confirm that they perform these unnecessary, cosmetic medical treatments on intersex children in

² **Dutch government** Report by the Dutch government on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) – The Netherlands, September 2018

³ **Lisette Kuyper** Sociaal en Cultureel Planbureau. LHBT Monitor 2016 , 2^e herziene versie- Opvattingen over en ervaringen van lesbische, homoseksuele, biseksuele en transgender personen: ISBN 978 90 377 0787 8 (12-05-16)

⁴ **Lisette Kuyper** Sociaal en Cultureel Planbureau. Transgender personen in Nederland: ISBN 978 90 377 0831 8 (09-05-17)

medical journals⁵, information for general practitioners⁶, information for parents of newborns⁷ and a letter to the editor of a Dutch newspaper⁸, *IGM and forced sterilization (articles 38, 39)*. We recommend that the Dutch government starts collecting data on the present and past incidence of unnecessary, cosmetic medical treatment of intersex children without the free and fully informed consent of intersex children themselves.

Article 38 of the Convention states that parties shall take all necessary measures to criminalize any form of female genital mutilation. In chapter II.2.6 of the Baseline report it is stated that the Netherlands has a zero-tolerance policy with respect to female genital mutilation. In other chapters, all other measures to prevent female genital mutilation, such as a Reporting Code Act (Chapter II.1.1), are described.

In many respects, 'normalizing' treatment on children without their consent, including Intersex Genital Mutilation (IGM), is comparable to Female Genital Mutilation (FGM)⁹. 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 'normalizing' medical treatment against their will. We consider the possibility of submitting a complaint to the Health Care Inspectorate as

⁵ **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

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

⁷ **UMC St Radboud**. Behandelteam meisjes met adrenogenitaal syndroom (AGS): Patiënteninformatie. Nijmegen, Nederland: UMC St Radboud; 2011.

⁸ **de Jong TPVM, Salvatore C**. Achterhaalde misstanden. De Volkskrant. 6 juni 2015, Pagina 21 Sect. Opinie en Debat, Rubriek U.

⁹ **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 . Green 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 Commissioner 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.

disproportionate to the grave nature of the violence committed against intersex people. We therefore strongly recommend the Dutch government to add the unnecessary non-consensual medical treatment of intersex persons to the Penal Code, equating the level of punishment of the crime with that of FGM, as described in the Dutch Penal Code (Wetboek van Strafrecht) art. 300-304, 307, 308.

Based on article 39 of the Convention, we recommend the Dutch government to add forced sterilization of intersex women to the Dutch Penal Code, based on the fact that intersex girls are often victim of sterilization without their prior and informed consent or understanding of the procedure as forced sterilization in general is also part of the Dutch Penal Code (Wetboek van Strafrecht) art. 300-304, 307 and 308, but not applied to intersex persons. NNID has testimonies from parents of intersex children showing that there is no rights-based medical protocol for dealing with intersex children, and that decisions on medical treatment have to be made without adequate information or understanding of the procedure. In one testimony, a mother of a girl, complained that she had consented to take a biopsy 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, then she 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 recommended that she should see a psychiatrist.

INTERSEX AND DOMESTIC VIOLENCE

(ARTICLES 1, 2, 3, 13, 18, 28)

One of the purposes of the Convention is to protect women against domestic violence. Girls under 18 years old are also explicitly part of the Convention. In Chapter I.2 of the report of the Dutch government, violence, and specifically domestic violence occurs in case of a dependent position between victim and perpetrator, such as the relation between parents and children. Taking the definition of the Dutch government as leading definition, the 'normalizing' treatments on intersex children, that are decided on by their parents, can be defined as domestic violence. We therefore recommend the Dutch government to add 'normalizing' medical treatments on intersex children to the Penal Code. The articles of the Penal Code on domestic violence, as described in the report of the Dutch government in Chapter V.1 can be used as guideline in this process.

REDRESS AND COMPENSATION

(ARTICLE 30)

Intersex women and children are not only victim of IGM and forced sterilization, but a growing number of intersex people claim to have experienced medical attention as (sexual) abuse¹⁰. Therefore, we

¹⁰ **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/analogue>.

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:

recommend the Dutch government to ensure access to redress, and the right to fair and adequate compensation and rehabilitation for victims of IGM and sexual abuse, both intersex children and intersex women, which can be linked to article 30 of the Convention.

RECOMMENDATIONS

- i) Incorporate intersex in the existing LGBT monitor, and facilitate data collection on the societal norms on intersex, and the well-being of intersex persons.
- ii) Start a procedure to ensure the right to fair and adequate compensation and rehabilitation for victims of unnecessary intersex treatments.
- iii) Add non-consensual intersex treatments of intersex persons (including children) to the Dutch Penal Code, and equate the level of punishment of the crime with that of FGM.

III. TRANSGENDER

VIOLENCE AGAINST TRANSGENDER YOUTH

(ARTICLES 3, 4, 7, 11, 14, 18 AND 33)

The assigned gender at birth is proven to be an obstacle for trans 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 youth and adults. 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.

As previously mentioned, girls under 18 years old are also explicitly covered by the Convention (article I.3.f), as it is in the interest of the child to be protected against violence. Transgender children are like any child under the care of parents, legal guardians or professionals in health care and education. The absence though of legal gender recognition of children under the age of 16, which is the legal minimum age for a person to change one's gender on their birth certificate¹¹, is a violation of human rights and a form of discrimination resulting in at least psychological harm, as also mentioned in 2012 by Human Rights Watch in their report *Controlling bodies, denying identities*¹² and COC Netherlands in their report on LGBTI children¹³ to the UN Committee on the Rights of the Child. Under international human rights law legal gender recognition based on self-determination is recognised as a human right for transgender people^{14 15}. We urge the government to guarantee access to legal gender recognition for

The **Need for Change**. Huddersfield, UK: University of Huddersfield, October 2017. ISBN 978-1-86218-151-9.

Viloria H. *Born both: an intersex life*. New York, NY, USA: Hachette Books; 2017.

¹¹ Burgerlijk Wetboek Boek 1, Afdeling 13. Wijziging van de vermelding van het geslacht in de akte van geboorte, Artikel 28, 2014.

¹² **Human Rights Watch.** *Controlling bodies, denying identities*, 2012.

¹³ **COC Netherlands.** *LGBTI children in the Netherlands*, 2013.

¹⁴ The Yogyakarta Principles, Principle 3, 2006.

¹⁵ **Council of Europe.** Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, 2010.

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.

The Student study of child abuse 2016¹⁶ which the Dutch Government brought forward in the Baseline Report does not mention LGBTI children. Although the study is said to show "which students run the greatest risk under what circumstances and which students are actually victims or have been victims in the past of one or more forms of child abuse", it does not differentiate between children on gender identity. From other research on social safety in and around schools we know that transgender students feel least safe at home as well as at school when compared with lesbian, gay, bisexual and straight cisgender students¹⁷.

VIOLENT FAMILIES

(ARTICLES 6, 7, 11, 15, 22, 33, 34, 35 AND 36)

In the past twelve months 42% of trans people experienced domestic violence, new research by Transgender Network Netherlands uncovered these stark numbers¹⁸. The data shows a parent is most often the perpetrator, while among the general population the (ex)partner is most often the perpetrator of domestic violence. This shows many trans people are living in fear of family members. Up to 15,7% of trans people that evidently experienced offenses of domestic violence over the past five years¹⁹. At present the Dutch government does not monitor domestic violence experienced specifically by trans people, neither are there any specific policies to counter or address domestic violence against trans people.

VIOLENCE AGAINST TRANSGENDER SEX WORKERS

(ARTICLES 20, 22, 23, 25, 27, 33, 35 AND 36)

Stigma regarding sex work disproportionately affects the many transgender women of color in The Netherlands doing sex work. Combined with the lack of licensed workspaces in The Netherlands this group is daily at risk of physical, sexual, mental and financial violence. This is reported by SoaAids Netherlands and Proud, the Dutch sex workers organisation, in their report Sex work and violence in The Netherlands²⁰. In being transgender, person of colour as well as sex worker this group is not only disproportionately affected by violence but also by obstacles to report violence and to receive support. Because of this institutions like police and shelters have little knowledge in the extent of violence and discrimination transgender sex workers experience, and government is insufficiently aware about how to support them in making their livelihood safer from violence.

¹⁶ ITS. Radboud University Nijmegen, 31 March 2017.

¹⁷ **Praktikon**. Sociale veiligheid in en rond scholen, 2016.

¹⁸ **Transgender Netwerk Nederland**. *Nergens echt veilig* ([concept title](#), expected date of publication November 20, 2018), 2018.

¹⁹ Explanation: *Offenses of domestic violence that can be regarded as criminal offenses, like physical and sexual abuse, threats of violence with a weapon or knife, strangulation and stalking.*

²⁰ **Soa Aids Nederland - Aidsfonds**. *Sekswerk en geweld in Nederland*, 2018.

RECOMMENDATIONS

- iv) Conduct research on child abuse among transgender and gender non-conforming children.
- v) In the interest of the child and to protect them from harm and abuse, legal gender recognition should be made accessible to children under the age of 16 in a quick, transparent and accessible way.
- vi) Address domestic violence experienced by trans people with an action program that includes among other things regular monitoring, actions to make trans people report domestic violence and raising transgender inclusivity within the organisations supporting victims of domestic violence.
- vii) Create sufficient safe licensed work spaces for transgender sex workers.
- viii) Create policies that contribute to safe reporting of violence by transgender sex workers, also for those who work unlicensed.

IV. ASYLUM

(Articles 21, 22, 23, 33, 35, 36, 46, 59, 60, 61)

STEREOTYPING IN ASYLUM PROCEDURES

Dutch government recognises sexual orientation and gender identity as grounds for asylum. In accordance with national and EU legislation, factors that need to be taken into account in an asylum procedure are the national legal situation and enforcement / implementation of laws, information on persecution and harm to the individual, their personal circumstances, including background, age and gender. EU law stipulates that specific guarantees should be made in the procedure with regard to asylum seekers at risk, including LGBTI. In practice however these guarantees do not seem to protect LGBTI asylum seekers adequately in their asylum procedure. An analysis of 267 asylum cases of LGBTI persons²¹ shows that they are confronted with prejudice and stereotypes throughout the procedure. LGBTI asylum seekers are at high risk of being rejected because of a faulty criteria being applied by the immigration authorities (IND). These are based on stereotypes of being gay involves a process of self-acceptance, knowing LGBTI organisations in your home country, what the penal code states and that being religious and LGBTI can't be combined. In addition, statements and supporting evidence eg. pictures provided by their partner are put aside and not considered, contrary to Dutch immigration law that does consider that as evidence for residence permits for partners. One third of LGBTI cases is rejected, of which 85% bases on the IND not believing they were LGBTI. In response to a call by COC to make 'self-determination' by LGBTI themselves the key criterion, the Minister of Justice announced on 4 July 2018 a change of policy to eradicate these stereotypes in the procedure.²² Recent court cases show that IND has not started implementing the changed policy, but is still judging people based on the same stereotypical criterium.

²¹ **Jansen S.** Trots of Schaamte? De beoordeling van asielaanvragen in Nederland na de arresten XYZ en ABC, COC Nederland, June 2018.

²² 25 June 2018, <https://www.coc.nl/homepage/staatssecretaris-welwillend-tegenover-asielvoorstellen-coc>

VIOLENCE AGAINST TRANSGENDER ASYLUM SEEKERS

A small number of transgender people seek refuge in The Netherlands, despite criminalization of trans people and figures on murder of trans people in countries of origin²³. Receiving a refugee status in The Netherlands on the other hand as a transgender asylum seeker is even more difficult than finding the means to flee from persecution. Research on the numbers of transgender asylum seekers requesting and receiving refugee status in The Netherlands are absent. Latin American trans people do seem to experience more difficulty than trans refugees from African and Middle Eastern countries in receiving refugee status. Research on the rejection of refugee status among this group by Transgender Network Netherlands is currently ongoing.

There is enough evidence to consider asylum requests by Latin American trans people as gender-related asylum requests. A large number of trans people do sex work in Latin America²⁴, stigma regarding trans people making them vulnerable for sanctions based on morality laws present in many Latin American countries and not to mention that trans refugees overwhelmingly report sexual violence no matter where their country of origin. We thus believe that this next statement made by the Dutch Government in the Baseline Report is false: "If a woman is at risk of ill treatment (including gender-based violence amounting to ill treatment) she will be granted an asylum status."²⁵ The Dutch Government does not seem to apply this principle upon transgender people from Latin America seeking refuge.

In overwhelming parts of the world trans people start gender affirmative medical care (i.e. cross hormonal treatment) without a doctor's letter, because regulated transgender care is rare. When transgender refugees receive their refugee status in the Netherlands a new problem arises when they depend on gender affirmative hormonal treatment. The gender affirmative care in asylum seeker center's is provided with as a human right to receive necessary health care. When someone gets a refugee status and is housed in a municipality they lose their access to hormonal treatment, because now they need the doctor's letter to get their medicines. This means they need a diagnosis for which waiting lists at medical expertise centers on gender dysphoria are currently between 18 tot 24 months²⁶. Transgender refugees' cannot access necessary care for this period of time nor during the following diagnostic period of 6 months and the subsequent 3 month waiting time to get the appointment with the medical doctor who prescribes the hormone treatment. For 33 months they will be bereaved from necessary gender affirmative care, this constitutes as inhuman and degrading treatment.

VIOLENCE IN ASYLUM CENTERS

A recent study²⁷ shows that LGBTI asylum seekers experience high levels of violence in the collective housing that is provided to asylum seekers from the moment they have arrived till the end of their

²³ **Transrespect.org**. Criminalization and prosecution of trans people & Trans Murder Monitoring Project update trans day of remembrance 2017, www.transrespect.org

²⁴ **RedLACTrans**. Waiting to die, regional report 2016-2017, 2017.

²⁵ **Dutch government**. Report by the Dutch government on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) – The Netherlands (p.62), September 2018

²⁶ **Medisch Contact**. [VUmc-genderteam geeft geen inschatting wachttijd meer](https://www.medischcontact.nl/nieuws/2018/05/31/vumc-genderteam-geeft-geen-inschatting-wachttijd-meer/), May 31 2018.

²⁷ **Douglas M. en van Zadelhoff J.** Welcoming Equality: De ervaringen van LHBTI-asielzoekers met de Nederlandse asielketen, commissioned by COC, 2018.

asylum procedure. Half of all 60 respondents reported having experienced verbal abuse, bullying, intimidation and both physical and sexual violence. Victims were also being treated as pariah's by being ignored, stared at, leaving the dinner table or being 'exhibited' to others. Some reported being addressed with Biblical texts to express their repulsion of homosexuality. Often perpetrators belong to a similar cultural and demographic group as the victim. The majority of victims said they were regularly experiencing discrimination, bullying or violence. One third even indicated this happened on daily or weekly basis; another third experienced this once or multiple times a month. Some incidences were adequately addressed after reporting to the housing authority COA and their staff addressing the situation. Many incidents however still go unreported and unaddressed. This was already brought up as a main concern in report on safety for LGBTI in asylum housing facilities in 2011.²⁸ Many recommendations of that report still stand and call on authorities for the need to take measures to create safe housing conditions.

RECOMMENDATIONS

- viii) Immigration authorities (IND) should implement the updated Dutch asylum policy based on the right to self-determination and increase LGBTI sensitivity and awareness of IND staff.
- ix) Dutch government should guarantee LGBTI asylum seekers a prejudice and stereotype free judgment of their asylum application, taking into account evidence provided by their partners
- x) Asylum requests by trans people should be regarded as gender related asylum request and take into account that the risk of ill treatment is far more common than uncommon for transgender asylum seekers.
- xi) Continuation of gender affirming treatments for transgender refugees needs to be guaranteed when they receive refugee status and residence in The Netherlands.
- xii) Asylum housing authorities (COA) should increase LGBTI sensitivity and awareness of their staff and monitor safety of LGBTI regularly, and expand availability of LGBTI-housing units.
- xiii) COA should implement a safety policy that ensures better information available on the reporting mechanism, a safety contact person, follow up or sanctioning of perpetrators and regrouping people based on being LGBTI.

V. VIOLENCE AND HATE CRIMES AGAINST LGBTI PEOPLE

(articles 4, 7, 9, 12, 13, 14, 29, 33, 35, 36, 40, 46)

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.²⁹ Specific

²⁸ **Deloitte.** Rapport inzake een kwalitatief onderzoek onder (oud) bewoners van asielzoekerscentra, naar de mogelijkheden ter verhoging van de meldingsbereidheid van incidenten op gebied van geloofsovertuiging en seksuele geaardheid, 2011.

²⁹ **Schuylf J.** Geweld tegen homoseksuele mannen en lesbische vrouwen, WODC/Movisie, 2009. Commissioned by the Dutch government.

research among transgender persons in the Netherlands shows that 43 percent experienced violence in the last 12 months.³⁰ Thus, more than seven hundred thousand LGBTI people in the Netherlands experience violence related to their identity.³¹ In 2014 1403 cases of hate crimes were reported to the police, up from 380 in 2008.³² 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.³³ 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.³⁴ Thus, whereas hundreds of thousands LGBTI persons in the Netherlands experience hate crimes and discrimination, only about 10 perpetrators are convicted each year.

IMPACT OF VIOLENCE ON LESBIAN AND BISEXUAL WOMEN

There is significant underreporting of incidents of violence by lesbian and bisexual women. A report from 2011³⁵ indicates that interviewees have become so used to verbal as well as sexual intimidation that they don't remember most incidences or have stopped paying attention to them. Violence occurs along a similar pattern mostly where perpetrators become aggressive when they see two women intimately eg. holding hands or if a woman does not conform to existing norms of femininity, eg. short haircut. It may start off with sexual innuendo turning rapidly into verbal abuse, (sexual) intimidation and / or physical violence. Of only the 24 interviewed women in the 2011 study, all reported having experienced violence to different degrees up to grave physical violence, one reported rape and one stalking and attempted murder. Violence within the family is in some instances related to the honour of the family that is being 'protected' by the perpetrator after finding out the sexual orientation of the victim.

This violence has a significant impact on lesbian and bisexual women, not only because of the physical injuries such as brain damage and broken bones, but also psychologically. Women in the report had suffered from burn-out, Posttraumatic Stress Syndrome and depression, in two cases leading to attempted suicide. Victims often feel shame or guilt, less safe and anxious, and might start avoiding certain places or being around people. Some feel even more different than others in society as a result of the violence and consider conforming more to the gender norms in society or hide their lesbian or bisexual identity. Women indicate they don't report incidences of violence due to (expected) negative responses from the police, lack of support by school management or fear of reprisal (neighbours or family).³⁶

GOVERNMENT RESPONSE

The Dutch government should broaden its approach beyond its common focus on violence against gay men and develop targeted responses that address the specificities of violence against lesbian and

³⁰ **Transgender Netwerk Nederland**. Veilig, zolang men het niet merkt... , October 2015, p. 3

³¹ Using a conservative estimate that about 6 percent of the Dutch population of 17 million is LGBTI.

³² **Verwey-Jonker Instituut**. Discriminatiecijfers politie 2014, 2014. Commissioned by the Dutch government

³³ **Verwey-Jonker Instituut**. POLDIS rapportage 2012, p. 11, 2013. Commissioned by the Dutch government

³⁴ Parliamentary document 30 950, 75, appendix p.3.

³⁵ **Movisie**. Zoenen is gevaarlijk. Onderzoek naar geweld tegen lesbische vrouwen, commissioned by Stichting OndersteBoven, Utrecht, December 2011.

³⁶ **Movisie**, 2011, p. 9 and **Schuylf**, 2009.

bisexual women, and violence against trans persons. Support to organisations working on lesbian, bisexual and trans issues can ensure better documentation, support to victims of violence and prevention in terms of resilience and self-esteem building of lesbian, bisexual and trans people. The government should address the causes of violence and gender stereotypes that are harmful to LGBTI people and anyone acting outside existing gender norms by creating awareness raising campaigns that promote definitions of genders and gender expression that are inclusive and go beyond the binary.

Government should optimize law, policy and practice so as to achieve lower hate crime rates, higher reporting rates and a higher percentage of perpetrators being prosecuted and convicted. Local governments play a key role in their responsibility to ensure social safety in neighbourhoods and can engage local actors in ensuring LGBTI-specific aspects are taken on board.³⁷

In its Security Agenda 2015-2018³⁸ 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 and targeted approach to specific groups, such as lesbian, bisexual and trans women. We furthermore urge the government in line with article 46 of the Convention to take the necessary legislative measures to combat hate crimes, by including a specific hate crime article in the Penal Code that sets higher maximum penalties for crimes that are hate-motivated, such as against LGBTI.

RECOMMENDATIONS

- xiv) 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.
- xv) Develop a targeted approach, such as lesbian, bisexual and trans women, to address the specific types of violence against them, provide more adequate victim support and increase reporting among these groups
- xvi) Include a specific hate crime in the Penal Code setting higher maximum penalties for hate-motivated crimes.

³⁷ 48 of in total 380 local governments are committed to making their municipality LGBTI-inclusive, which includes safety. These are so-called 'Regenbooggemeenten'. See <https://www.movisie.nl/artikel/regenboogsteden-overzicht> .

³⁸ Veiligheidsagenda 2015-2018, p.11.

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