



Submission to the United Nations Human Rights Council for the 1st round of the 2nd cycle of the Universal Periodic Review

The Netherlands

This information is submitted by COC Netherlands¹, Transgender Network Netherlands² and ILGA-Europe³. During the first UPR cycle no specific recommendations relating to human rights of lesbian, gay, bisexual and transgender people (LGBT) were made. This report however does not necessarily refer to new human rights issues on grounds of sexual orientation and gender identity, but rather describes existing legal gaps in facilitating equality, as well as some of the remaining challenges towards achieving full social acceptance of LGBT people. NGOs have used The Yogyakarta Principles⁴ as guide to draft this submission.

Overview

The Netherlands has come a long way in improving human rights of lesbian, gay, bisexual and transgender people. With the abolishment of article 248bis in 1971 the age of consent was equalized between same-sex and opposite sex relations. The General Equal Treatment Act (1994) includes hetero- and homosexuality as ground for non-discrimination, but still excludes gender identity and bisexuality as explicit grounds. The Dutch constitution currently makes no explicit reference to sexual orientation and gender identity as grounds for non-discrimination. Further legal issues can be identified in relation to: forced sterilization requirements for transgender people; denial of equal rights for same-sex parents; the possibility for religious schools to refuse/expel homosexual teachers and students. Besides these legal issues, civil society organisations put an important emphasis on promoting social acceptance and thus encourage the government to facilitate awareness raising programs and make the inclusion of LGBT issues in primary and secondary education compulsory. The current government has included emancipation of lesbian, gay, bisexual and transgender people explicitly in its governing agreement and has appointed a minister responsible for related policy and programs.

Sole fact construction - *The Right to Equality and Non-Discrimination, The Right to Education*

The present Dutch Equal Treatment Law provides religious schools the right to refuse and/or expel homosexual teachers and students. According to the law, such a decision can not be based on the 'sole fact' of their homosexuality (having a same sex relationship included), but because of so called

¹ Federation of Dutch associations for the Integration of homosexuality COC Netherlands. COC Netherlands was founded in 1946 and is in Special Consultative Status with the Economic and Social Council of the United Nations since 2008.

² TNN works towards a gender-diverse society, for the emancipation of transgenders and for the wellbeing of transgenders and their relatives.

³ ILGA-Europe, the European Region of the International lesbian, Gay, Bisexual, Trans and Intersex Association, enjoys consultative status at the Economic and Social Council of the United Nations and participative status at the Council of Europe. ILGA-Europe is a European NGO with more than 240 national and local lesbian, bisexual and transgender (LGBT) member organisations in 47 European countries.

⁴ Yogyakarta Principles on the application of International Human Rights Law in relation to Sexual orientation and Gender Identity, www.yogyakartaprinciples.org.

‘additional circumstances’. What these circumstances are, is up to judges to decide, but the paragraphs thus pose a threat to openly gay students and teachers in religious schools. It’s not ruled out that a gay student could be expelled because he/she gives a presentation about gay issues in class or a teacher is expelled because she/he attends gay pride. The European Commission, the Council of Europe and the Dutch Equal Treatment Committee have protested against the current legal situation⁵. **NGOs recommend the government to abolish the Sole fact construction.**

Education - *The Right to the Universal Enjoyment of Human Rights; the Right to Education*

Recent research demonstrates that two-thirds of young lesbian and gay people have experienced negative reactions to their sexuality. Half of young lesbian and gay people had suicidal thoughts, 12% have actually attempted suicide and 13% often suffer from depression⁶. These rates are up to five times higher than amongst young heterosexual peers.

“A few weeks ago I was at the offices of the student loans company, because I wanted to apply for a loan. They wouldn’t help me, because they didn’t believe that I was the same person as the person on my papers. So I had to have them call first the VU Hospital, and then my lawyer, before they would assist me.”

Dutch Student in Human Rights Watch report “Controlling bodies, denying identities” (2011)

The situation of young trans people has not specifically been researched. Various programs supported by both local governments as well as by the ministry of Education, are carried out to raise awareness, eliminate prejudice and thus increase social acceptance of LGBT young people. These programs are however not carried out by all schools, and thus don’t reach out to all young people. This is illustrated by the fact that approximately two-thirds of the students do not receive any education and/or information on homosexuality during their secondary education.⁷ This is a grave concern to NGOs who recommend to include education on LGBT issues in the Core Goals⁸. This position has been supported by the Dutch Parliament, which has tabled two resolutions that received a wide majority to this matter. The Dutch government has recently promised to implement the resolutions in primary and secondary education, but so far has not issued a proposal. **The NGOs recommend a swift implementation of the Minister’s promise to include education on LGBT issues in Core Goals.**

Constitution and the General Equal Treatment Act - *The Right to Universal Enjoyment of Human Rights; The Rights to Equality and Non-Discrimination*

The formulation of Article 1 of the Constitution of the Kingdom of the Netherlands currently does not explicitly include sexual orientation and gender identity as grounds that should be protected against discrimination⁹. The Dutch Equal Treatment Committee has urged the government to include sexual

⁵ The Council of Europe, in a report by Human Rights commissioner Thomas Hammarberg, called for the abolishment of the paragraphs, stating that a publicly financed education system should be accessible by anyone without discrimination. The European Commission started an infringement procedure against The Netherlands, because it considers the conditions as set by the paragraph for the exception to the principle of non-discrimination not strict enough and therefore not in accordance with EU anti-discrimination regulations. The Dutch Equal Treatment Committee (a state body) advised to abolish the construction.

⁶ Findings from report “Steeds gewoner, nooit gewoon” (Increasingly normal, never the norm), Saskia Keuzenkamp, The Netherlands Institute for Social Research 2011, <http://www.scp.nl/dsresource?objectid=26408&type=org>.

⁷ Findings of Nationale Jeugdraad (2006) and University of Amsterdam (2008).

⁸ The Core Goals are used by the government to enforce obligatory educational objectives to primary and secondary schools.

⁹ Article 1 currently reads: All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex or on any other grounds whatsoever shall not be permitted.

identity (homo- or heterosexual orientation) in article 1¹⁰. A special commission installed by the government points out that explicit mentioning in article 1 offers several (extra) forms of legal protection and has symbolical value¹¹. Due to the nature of legal protection the symbolic value that explicit inclusion will offer, **NGOs recommend to include sexual orientation as an explicit ground for non-discrimination in article 1 of the Dutch Constitution and to specify that article 1 also protects against discrimination on the grounds of gender identity and gender expression (for example by specifying that ‘discrimination on the grounds of sex’ includes gender identity and gender expression).**

Gender identity is currently not explicitly included in the General Equal Treatment Act of 1994. Although discrimination of trans identities is widespread in various spheres of life, the government remains of the position that indirect anti-discrimination protection is offered in a sufficient fashion by existing legislation. The same applies for gender expression. Several forms of discrimination in the end are neither sex- nor gender identity based, but based on the gender expression of a person. **NGOs recommend to include gender identity and gender expression as an explicit ground for non-discrimination in the existing General Law on Equal Treatment.**

At present, the General Equal Treatment Act of 1994 does not offer explicit protection against discrimination on **the grounds of bisexuality, since the Act uses the wording ‘hetero- or homosexual orientation’**. **NGOs recommend to include bisexuality as an explicit ground for non-discrimination in the General Equal Treatment Act.**

Sterilization requirement, hormone treatment - *The Right to Recognition before the Law; the Right to Privacy; Protection from Medical Abuses*

In the Dutch legal system all official registration acts relate to the gender on the birth certificate. Therefore it is of great importance that the birth certificate reflects a person’s lived gender. For transgender people to change this certificate in case it does not reflect the gender identity of the person involved, strict requirements are in place. The requirement of sterilization and physical adaptation as far as possible, hinders many trans people in their pursuit of a change in gender registration. Only after proof of sex reassignment surgery and hormonal treatment a birth certificate may be changed. Such medical interferences are unnecessary and can pose threats to the physical and mental wellbeing of persons involved. This situation excludes people who for their consciousness or any other reason do not choose to undergo this surgery. They are doomed to live with the wrong gender registration. The Dutch government has announced law changes to reverse this situation, a position which was strongly supported by the CEDAW committee in 2010¹², as well as by the Council of Europe Commissioner for Human Rights¹³. Whilst appreciative of the overall proposed legislation, NGOs are concerned that it does not honour the right to autonomy over the body as it still seeks a role for expert opinion on the trans person's conviction. **NGOs recommend to abolish unnecessary conditions of sex reassignment including hormonal treatment, surgery and irreversible infertility by the implementation of the proposed law, whilst ensuring that the law respects a person's right to autonomy over their own body.**

¹⁰ Commissie Gelijke Behandeling, Advies van de Commissie Gelijke Behandeling over artikel 1 Grondwet, 2004.

¹¹ Commissie rechtsgevolgen non-discriminatiegronden Artikel 1 Grondwet, 2006.

¹² See: Concluding observations of the Committee on the Elimination of Discrimination against Women on the Netherlands, 45th session, February 5th 2010. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/242/68/PDF/N1024268.pdf?OpenElement>

¹³ See: http://www.coe.int/t/commissioner/Viewpoints/090105_en.asp

Health care - *The right to the best available health*

The situation regarding health care for transgender people in the Netherlands is troublesome. A waiting period of one year for access to trans specific healthcare at the Amsterdam gender dysphoria care team is not exceptional. Several people get so desperate from this, that they undertake a suicide attempt. Attempts to improve this have not yet yielded results, although a sense of urgency is growing with the health care providers. In regular health care trans people also encounter problems of non-recognition. A European study which included the Netherlands demonstrated 15% to 23% of trans people are refused treatment in non-trans-related health care. 18% to 31% of trans people feels that their being trans has a negative impact on their treatment by health professionals. There are no newer, specific data on the Netherlands in this.¹⁴ For transgender people that choose to undergo medical treatment, several medically necessary options are not available. For some trans people mamma augmentation or a penis implant are deemed necessary by specialists but this is not covered under health insurance. The Committee on the Elimination of All forms of Discrimination Against Women already pointed the Netherlands to this omission¹⁵. **NGO's recommend more research and attention for the health needs of trans people.**

Depathologization - *The Right to Recognition before the Law; the Right to Privacy; Protection from Medical Abuses*

Dutch treatment of transgender people is still based on a pathologising views on transgender. Using DSM IV-tr and ICD-9 or 10¹⁶ trans people are still considered to have a mental problem for their being trans. This leads to medicalization and prejudice because these medical views is being used as a justification for unequal treatment. **NGOs recommend the depathologization of trans identities.**

Co-parenting right - *The Right to Found a Family, The Rights to Equality and Non-Discrimination*

When a child is born in a lesbian relationship the non-biological mother needs to formally adopt the child before legal co-parenting is recognized under law. This is also the case for lesbian couples that are married or have their partnership legally registered. The current situation leads to discrimination as parental benefits are not provided to the second parent. Furthermore, the current situation is not in the best interest of the child, since the child can be deprived of a second parent for an extended period of time. The government has recently issued a law proposal on this matter. **NGOs recommend a fast implementation by the government of this proposal, taking into account the suggestions for alterations that NGO's have brought to the attention of the government.**

Discrimination against trans people - *The Right to Work*

Trans people experience rejection at work. During gender transition 1 in 7 trans people experiences rejection by most male colleagues. Two in three trans persons indicate their being trans hinders or has hindered them in career development. Research talks about a rainbow colored glass ceiling, not only women but also LGBT persons suffer from heteronormativity. The stigma on being trans led many trans people to choose a wrong career, more in the direction of their official gender than fitting with

¹⁴ ILGA Europe's Transgender EuroStudy (2008, p.59)

¹⁵ See footnote 12

¹⁶ ICD-9: 302.5, ICD-10: F.64; DSM-IV-tr 302.3, 302.6, 302.85

their felt identity¹⁷ **NGO's recommend more attention to eliminating work related obstacles for trans persons.**

Hate-crimes and violence - *The Right to Security of the Person*

The problem of violence against transgender persons is not well enough recognized. Where there is general under reporting to the police of violence this is even stronger where it concerns LGBT persons. Statistics show a rise of violence in the public sphere against mainly gay men. According to available data, lesbian women are more often victims of domestic violence than of violence in the public sphere. Data of violence against transgender people is not disaggregated but recent Dutch research shows strong feelings of insecurity amongst trans people¹⁸. **NGOs recommend more attention to the prevention of LGBT-phobic violence.**

Gender stereotyping

Gender stereotyping leads to more feelings of inadequateness among LGBT and heterosexual people because it forces them to behave according stereotypical gender norms¹⁹. The Dutch government is toning down efforts to address stereotyping, rather than increasing them. In its most recent Concluding Observations to the Netherlands, the Committee on the Elimination of All forms of Discrimination Against Women expressed concern in relation to this. **NGOs recommend more attention for eliminating gender stereotyping.**

Asylum seekers and refugees - *The Right to Seek Asylum*

"Fleeing Homophobia, Asylum Claims related to Sexual Orientation and Gender Identity in Europe", a research conducted by VU University Amsterdam and COC Netherlands,²⁰ shows that the Netherlands have a good policy and practice in not requiring asylum applicants from countries that criminalise sexual orientation to seek police protection against homophobic persecution.²¹ Although the Dutch policy rules hold that homosexual people are not required to conceal their sexual orientation upon return in the country of origin,²² examples are still being reported in which the asylum authorities reason that LGBTIs do not have to fear persecution as long as they "accommodate" and conceal their sexual orientation or gender identity (the "discretion requirement"). Furthermore, when asylum applicants disclose their sexual orientation or gender identity only in a subsequent procedure, this circumstance is in most cases not considered a "new fact" and not taken into account. Decisions are sometimes based on stereotypes, thus showing a lack of understanding of LGBTI issues. LGBTI asylum seekers face problems in reception and detention centres. **NGOs recommend the Dutch authorities to follow their own policy rules and abolish "discretion requirement" arguments; seriously take into account the reasons for late disclosure of LGBTI identities in the asylum procedure; provide training in order to combat decision making based on stereotypes towards LGBTIs; protect LGBTI people against discrimination in asylum centres.**

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¹⁷ Transgender en werk - een onderzoek naar de arbeidssituatie van transgenders in Nederland en Vlaanderen. By dr. Paul Vennix.2010 <http://www.rutgersnissogroep.nl/overderutgersnissogroep/productenendiensten/onderzoekspublicaties/transgenders-en-werk.pdf>

¹⁸ "vrijheid en zichtbaarheid: kwalitatief vooronderzoek naar transgenders en veiligheid."

http://www.rutgersnissogroep.nl/productenendiensten/onderzoekspublicaties%2Fdownloadbare-publicaties-in-pdf/08032011_rapport_TG.pdf

¹⁹ Vennix, 2010., p. 138.

²⁰ <http://www.rechten.vu.nl/nl/onderzoek/conferenties-en-projecten/onderzoeksproject-fleeing-homophobia/index.asp>

²¹ Aliens Circular 2000 C2/2.10.2.

²² Aliens Circular 2000 C2/2.10.2.