

Universal Periodic Review of the Netherlands 4th cycle, 41st session November 2022

Submission by: Stichting CHOICE for Youth and Sexuality

Key words: youth, Comprehensive Sexuality Education (CSE), human rights education, gender equality, consent, school curriculum, non-discrimination, SOGIESC, young LGBTQI+ people, meaningful participation, sex work, prostitution, trafficking, labour rights.

Executive summary:

1. This report is submitted by CHOICE for Youth and Sexuality and zooms in on two topics of particular importance to young people from marginalized communities concerning their meaningful participation in decision-making, and bodily autonomy, CHOICE's core expertise areas. The topics in which we see this exemplified are: Comprehensive Sexuality Education (CSE) and the attention for sexual and gender diversity within (C)SE; proposed repressive measures for sex workers, especially young sex workers.
2. In decision-making regarding both topics, we note a lack of meaningful participation of the concerned communities, young LGBTQI+ people and sex workers respectively, resulting in policies that do not adequately fit their needs or realities. In fact, current (proposed) legislation is either unfit, insufficient, or causes detrimental (side) effects.
3. We undersigned the joint submission by COC Netherlands, Transgender Netwerk Nederland (TNN), NNID, and Bi+ Netherlands. Through this separate individual report, we aim to zoom in on aforementioned topics of particular concern to us.
3. We aim to urge the Netherlands to critically review relevant articles of the constitution (article 1 and 23), moralist practices, and current inaction to sanction non-compliance to existing guidelines or legislation that underlie the current difficulties in respecting, protecting and fulfilling the human rights and societal acceptance of (young) LGBTQI+ and sex workers, and finding adequate redress for victims of exploitation and trafficking.

About CHOICE for Youth and Sexuality

CHOICE for Youth and Sexuality is a youth-led organization focusing on the sexual and reproductive health and rights (SRHR) of young people and their meaningful participation in decision-making. We are based in Amsterdam, Netherlands and originated as the youth group of Rutgers in 1997, a well-known organization in the field of SRHR in the Netherlands and beyond. CHOICE has obtained ECOSOC status in 2019.

We believe all young people have the power to make decisions about their sexual, reproductive and love lives and advocate for youth's SRHR and meaningful participation in the decisions made about their lives. We strengthen the capacity of young people and youth-led organizations, enabling them to become leaders and changemakers in their communities.

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Looking back at the previous cycle (3rd cycle, 27th session 2017)

For this report, we make use of some of the recommendations from the previous cycle (3rd cycle, 27th session) that relate to the topics addressed in this stakeholder submission.

The first recommendations concern education that is inclusive of topics such as sexual diversity, resilience and consent.

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);*

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).*

Source of position (both recommendations): **A/HRC/36/15/Add.1**

The recommendations were supported by the Netherlands. This recommendation is **partially implemented**. The difficulties around full and effective implementation are elaborated on in chapter I.

Examples of previous recommendations given by the Netherlands:

116.33 to **Mongolia**: *Introduce a non-discrimination policy inclusive of sexual orientation and gender identity in all educational institutions, to ensure a safe environment for lesbian, gay, bisexual, transgender and intersex youth to develop and express themselves without the fear of retribution by educational institutions or peers.*

96.42 to **Barbados**: *Enact legislation that ensures protection from discrimination on the grounds of sexual orientation or gender identity in the areas of employment, health care and education.*

The recommendations mentioned above are not received and supported, but given by the Netherlands. We hope the same recommendations will be taken to heart by the Netherlands to promise the same to students on national ground.

The following recommendations concern anti-trafficking efforts and discrimination on the labour market:

131.124 *Strengthen efforts to combat human trafficking (Morocco);*

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).*

Source of position (both recommendations): **A/HRC/36/15/Add.1**

Both recommendations were supported by the Netherlands. These recommendations are **partially implemented**. This is discussed further in chapter II, as well as potential avenues for positive change.

CHAPTER I - Comprehensive Sexuality Education (CSE)

Background

Every primary and high-school within the Netherlands is obliged to provide some form of sexuality education to their students; however the exact guidelines on how to provide (comprehensive) sexuality education are not officially agreed upon. The Ministry of Education, Culture and Science states¹ this mandate aims to prevent sexual violence, discrimination towards people with diverse SOGIESC², and foster the resilience of young people regarding their health and wellbeing, and make informed decisions. It is not always carefully monitored if schools provide CSE to students from this intersectional point of view, despite having included ‘sexual diversity’ as a point of attention in sexuality education since 2012, and recommending the WHO ‘Standards for Sexuality Education in Europe’³ as guidelines, in which respect for diversity is also taken up. We see a clear need for officially agreed, comprehensive national guidelines on CSE with an intersectional and positive focus on several topics, such as sexual pleasure, boundaries, consent and resilience, sanctions for non-compliance through the Inspectorate for Education and an evaluation of article 23 of the constitution, which describes the religious freedoms of schools in the Netherlands. This article is often pushed to the forefront by schools and teachers not complying with aforementioned mandate set by the government, sometimes resulting in abhorrent situations for students as described below.

CSE challenges

Research by Rutgers and Aidsfonds - Soa Aids Netherlands from 2017 showed that Dutch students rated their CSE as mediocre, with a 5.8 out of 10⁴. A brief desk research into challenges to CSE in the Netherlands pointed out the following issues:

In the Netherlands, professionals in schools are encouraged by the government to provide sexuality education based on ‘scientific evidence alone’, and must aim to reach a so-called ‘attainment target’, in which the government has stated in general terms what students should know about sexuality and sexual/reproductive health by the end of secondary school⁵. Individual schools and teachers can decide for themselves how they want to reach this goal. The freedom of schools to decide on teaching methods for CSE and its content is protected in article 23 of the constitution, and given its origins in the (religious and political) pillarization of the Netherlands, mainly concerns (and protects) religious schools. Moreover, contrary to Mathematics or Biology, CSE is not an official field of study. Therefore, the quality of the education is not guaranteed within an official department, as other official fields of study are. In 2016, the Dutch Education Inspectorate concluded⁶ that the provision of CSE is not very goal-oriented, highly teacher-dependent, and not guaranteed in a continuous learning pathway. Furthermore, the Education Inspectorate found that CSE is often given attention in reaction to incidents (such as the #MeToo movement); the provision of sexual education is thus isolated, incidental and not goal focused enough or structurally embedded in the curriculum and policy of the school⁷.

¹ The website ‘seksuele vorming’ is the main point of information for schools and teachers regarding sexuality education, and explains the government’s core targets and suggestions for standards <https://seksuelevorming.nl/visie-beleid/overheidsbeleid-en-regelgeving/kerndoelen/#:~:text=Seksuele%20vorming%20is%20sinds%20eind.voorkomen%2C%20maar%20o%20homonegatief%20gedrag.>

² SOGIESC: sexual orientation, gender identity and expression, and sex characteristics.

³ <https://seksuelevorming.nl/wp-content/uploads/2021/07/WHO-Standards-for-sexuality-education-in-Europe.pdf>

⁴ <https://www.rtlnieuws.nl/nieuws/nederland/artikel/4877851/jongeren-ontevreden-lessen-seksuele-voorlichting-middelbare-school>

⁵ Krebbekx, W. (2018). What else can sex education do? Logics and effects in classroom practices. *Sexualities*, 21(8), 1-17. <https://doi.org/10.1177/1363460718779967>. Retrieved via: <https://pure.uva.nl/ws/files/30987860/1363460718779967.pdf>

⁶ Website of the Education Inspectorate reporting on the attention for sexual diversity, 2016 <https://www.onderwijsinspectie.nl/actueel/nieuws/2016/09/05/omgaan-met-seksualiteit-en-seksuele-diversiteit>

⁷ <https://www.rutgers.nl/wat-wij-doen/seksuele-vorming>

Research by Rutgers and Aidsfonds - Soa Aids Netherlands highlights that young people in the Netherlands find the CSE that they receive to be too one sided. Subjects such as sexual and gender diversity, gender norms, online expression of sexuality, sexual pleasure and the importance of consent and responding to coercion are currently missed by Dutch youth. Furthermore, Dutch youth highlighted that the quality of the sexuality education was highly teacher dependent, as not all teachers felt comfortable discussing these issues with their students. We even have a word in our language that describes the fear of teachers to discuss topics around sexual health and rights with students: *handelingsverlegenheid*. The research by Rutgers also emphasized the importance of creating a safe space in class, which is currently unfortunately not always guaranteed. Finally, Dutch youth indicated that they would prefer to receive CSE until the last year of high school, as that is the time at which they have (had) more sexual experiences. According to the research by Rutgers and Soa Aids Netherlands, CSE is mostly restricted to students aged 13 and 14⁸, and not structurally integrated into school curricula, but incidental.

A highly poignant example of how the content and quality of CSE is highly dependent upon individual teachers and schools, and dealing with sexual and gender diversity in general, is the recent case of a conservative Christian reformed school who forced their students to come out of the closet in a highly abusive manner. An article by NRC set forth how at the Gomarusschool in Gorinchem homosexuality was seen as ‘a sin against nature’. Students who had confided in a ‘trust person’, a social worker at their school, about their identity or their questions about sexuality, were locked up in classrooms while their parents were called. As their parents came to the school, the students were forced to share intimate details about their sexual or gender identity. This extreme example of subjecting school children to ill-treatment, child abuse and ridicule, has shocked the public and many politicians, although not enough to take adequate action. Religiously conservative schools still explicitly reject sexual and gender diversity and expression. Most religious schools therefore use mandatory ‘identity agreements’ that parents and students must sign, pledging to reject sexual and gender diversity, amongst other things. Non-compliance of students by being themselves, will have repercussions for the student. A motion was passed in parliament⁹ to end this discriminatory practice, but both this, as well as compliance with the mandated attention to respecting sexual diversity, is frustrated by the religious freedoms of schools as described in article 23 of the constitution. Moreover, former students of the school in question stated that books they were required to read reinforced harmful or outdated ideas about gender, sexuality, contraceptives and relationships. In some biology books information on safe sex and how to use condoms was cut or ripped out of the books¹⁰.

In conclusion, the fact that young LGBTQI+ people face discrimination and bullying in school, and students receive inadequate sexuality education, is often exacerbated by a religious context. Full and structural implementation of recommendation 131.138 and 131.136 is needed for the protection of all students, and the promotion of a society that respects human diversity.

Recommendations:

- a) Ensure that the Inspectorate of Education monitors laws and regulations closely and takes appropriate action in case of non-compliance by schools, especially when marginalized students are actively discriminated against;

To counter future *handelingsverlegenheid* and prevent CSE from being an incidental topic discussed in the classroom:

- b) Include promotion of tolerance and non-discrimination of LGBTQI+ structurally in the curriculum of all teachers’ academies, by 2026;
- c) Evaluate article 23 of the constitution on the freedom of education and its (potential) harmful effects for minority groups.

⁸ <https://rutgers.international/resources/knowledgefile-cse/>

⁹ Motion by Peter Kwint, SP, 2021 (adopted)

<https://www.tweedekamer.nl/kamerstukken/detail?id=2021Z16917&did=2021D36389>

¹⁰ <https://www.nrc.nl/nieuws/2021/03/26/school-duwt-kinderen-ongevraagd-uit-de-kast-a4037387>

- d). Take up ‘gender diversity’ in Article 1 (discrimination clause) of the constitution, in addition to ‘sexual diversity’.

CHAPTER II - Anti-trafficking efforts and sex work legislation

Background

In 2000, the brothel ban was lifted¹¹. Existing brothels were taken up in the process of legalization. Bettering the position of sex workers and their rightsholders’ position, which would aid them to exit situations of exploitation including trafficking, was given little attention. To this day, 22 years later, the labour rights of sex workers in the Netherlands are not respected, nor do many sex workers that become a victim of (labour) exploitation or trafficking, find redress¹².

Existing sex businesses that complied with the new regulations were able to operate legally since the lifting of the brothel ban, whilst individual sex workers now became ‘unlicensed’ workers by default. The national government was unable to agree on national prostitution legislation, and thus decentralized this to municipalities, resulting in our current situation: every municipality can decide upon their own prostitution policy through their local municipal ordinance. This meant the 2000 definitions of ‘legal’ (over 18, not coerced and eligible to work in the Netherlands) and ‘illegal’ (minors, coerced, not eligible to work in the Netherlands) sex work are no longer upheld in practice: the license is required for all, including for individuals. And a municipality can decide to go for a ‘zero-option’¹³, or ‘maximum-option’, where there are no, or very limited licenses available, resulting in locally creating situations where legal sex work is not feasible. The unlicensed and illegal parts of the industry are confused, with severe repercussions for those wrongly accused of working illegally. Sex workers have been evicted from their homes, have seen their children taken away by social services, have been refused healthcare due to stigma, and are unable to access services such as opening a bank account, getting insurance, or getting a mortgage or lease agreement for housing, despite paying taxes¹⁴. The tax paying sex worker lost all confidence in their government during the pandemic. Whilst all other sectors were eligible for emergency financial support, sex workers were exempt. Numerous letters and cries for help¹⁵ to the government were unsuccessful¹⁶.

Oftentimes, these situations are even more stringent for male and transgender sex workers, who are kept outside legal businesses completely and face double stigma, or intersecting forms of discrimination¹⁷. Because of the faulty licensing system, also individual legal sex work remains inaccessible to them.

Because the number of licenses available has been ‘frozen’ since 2000, the legal sector can only shrink, and any new initiative is ‘illegal’ by default. Despite this harsh reality, a new law is currently pending (*Wet regulering sekswerk*)¹⁸, aiming to even further repress and criminalize the industry. The

¹¹ Senate reporting on the lifting of the brothel ban in 2000

https://www.eerstekamer.nl/wetsvoorstel/25437_opheffing_algemeen

¹² National Rapporteur on Human Trafficking, report on offenders, 2015-2019:

<https://www.nationaalrapporteur.nl/publicaties/rapporten/2021/01/21/dadermonitor-mensenhandel-2015-2019>

¹³ Example of ‘zero-option’ in a Dutch municipality:

<https://zoek.officielebekendmakingen.nl/gmb-2020-235507.html>

¹⁴ Sex work, stigma and violence in the Netherlands

https://www.nswp.org/sites/nswp.org/files/sex_work_stigma_and_violence_in_the_netherlands_reportdigital.pdf

¹⁵ Example of a letter to the national government regarding the stringent situation of sex workers during the pandemic: <https://sekswerkexpertise.nl/wp-content/uploads/2020/05/Brandbrief-SekswerkExpertise-COVID-19-VWS-12-mei-2020.pdf>

¹⁶ Research by Aidsfonds – Soa Aids Netherlands on the pandemic and sex work:

<https://www.soaids.nl/nl/professionals/nieuws-en-standpunten/nieuwsbericht/wat-is-impact-van-corona-op-sekswerk-in-nederland>

¹⁷ Article by TNN (2018) about the SANL report on violence, focusing particularly on the situation for trans sex workers: <https://www.transgendernetwerk.nl/verbijsterend-veel-geweld-tegen-cis-en-trans-sekswerkers/>

¹⁸ Page of national parliament on the *Wet regulering sekswerk*:

<https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?id=2021Z01543&dossier=35715>

law is pushed as being anti-trafficking legislation, but community organizers, anti-trafficking organizations and academics from within the Netherlands and beyond fear the exact opposite¹⁹.

The law proposes to keep the current licensing system and thus also the freedom of municipalities not to allow sex workers and sex businesses to work legally, but adds a mandatory registration system. A very similar registration system has been implemented in Germany, where they've seen only 17% of sex workers registering due to fear of repercussions when outed, and the majority, 83%, now driven underground, invisible to even community organizations²⁰.

Other parts of the law proposal include third party criminalization, where anyone associated with a sex worker, even the chauffeur or bookkeeper of a legal, tax-paying worker, will fear prosecution, likely leaving sex workers isolated from their current business or even personal relations, resorting to an underground circuit.

Next to this, the government sees younger sex workers, between the age of 18 and 21, as more vulnerable. The proposed solution of the government in the proposed Wrs is to increase their vulnerability by moving them from having legal status as workers, to illegal. The maximum age to practice sex work will be 21 years of age. The Council of State (Raad van State) strongly discourages this measure²¹, because of its expected detrimental effects for this group of younger sex workers. Besides, this rule sets apart sex workers from any other worker because of this age restriction.

In conclusion, CHOICE discourages the conflation of trafficking and sex work in the political, legal and public discourse, and supports sex workers' call for decriminalization. We urge the state to move in a direction that is beneficial for the health and safety of sex workers, and to move away from further repressive measures as currently proposed. Neither trafficking nor the labour rights of sex workers can be adequately addressed when the sector is driven further underground.

Recommendations:

- a. Repeal pending repressive measures (*Wet regulerend sekswerk*), and move towards an integrative policy approach that benefits the health and safety of those involved in the sex industry.
- b. Ensure the meaningful participation of sex workers in decision-making that concerns them.
- c. Decriminalize sex work by 2030.

¹⁹ Recorded responses to the civil consultation on the Wrs law proposal (internetconsultatie) <https://sekswerkexpertise.nl/internetconsultatie/>

²⁰ <https://taz.de/BVerfG-zu-Prostituiertenschutzgesetz/!5525185/>

²¹ Advice of the Council of State on Wrs: <https://www.raadvanstate.nl/@121782/w16-20-0238-ii/>