

Children's Rights in the Netherlands

The third report of the Dutch NGO Coalition for Children's Rights on the implementation of the Convention on the Rights of the Child



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Algemene Onderwijsbond
Augeo Foundation
Beweging ATD Vierde Wereld
BLINN (alleen Facultative Protocol 34)
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Cordaid
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Eigen Kracht Centrale
Expertisepunt Jeugdprostitutie
Fice – NL
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Institute for Migration Issues
IREWOC
JeugdNU
Jeugdsportfonds
Johannes Wier Stichting
Kerk in Actie
Kinder- en jongeren rechtswinkels
Kinderen-Ouders-Grootouders
Meldpunt Kinderporno
Nationale Jeugdfonds Jantje Beton
Nationale Jeugdraad
Nederlandse Stichting voor het Gehandicapte Kind
Nederlandse Vereniging voor Kindergeneeskunde
NJCM
Nuso Speelruimte Nederland
Plan Nederland
Profit for the World's Children
Project "Pretty Woman"
RAAK
Rading, de
Rotterdamse Jongerenraad
SAMAH
Save the Children
Stichting Religieuzen tegen Vrouwenhandel
Stichting Halt Nederland
Stichting INLIA
Stichting Kinderpostzegels Nederland
Stichting LOS
Unicef Nederland
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Verdiwel
Vereniging VluchtelingenWerk Nederland
Vluchtelingen Organisaties Nederland
Wereldkinderen
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Preface

This is the third report of the Dutch NGO Coalition for Children's Rights (Dutch NGO Coalition for Children's Rights) on the implementation of the Convention of the Rights of the Child (CRC) in the Netherlands. The report covers the period from 2004 to June 2007.

The Dutch Government submitted its third report on the implementation of the CRC in the Netherlands to the UN Committee on the Rights of the Child in 2007. The NGO report from the Coalition for Children's Rights was drawn up independently of the (third) Government report, and consequently the NGO report does not constitute a direct response to the Government report submitted to the UN Committee on the Rights of the Child in May 2007. In keeping with the previous two NGO reports, the Dutch NGO Coalition for Children's Rights has once again decided to concentrate on a number of areas in which the rights of the child are an issue in the Netherlands. However, this does not imply that the rights of the child have been fully implemented in other areas.

The subjects reviewed in further detail in this NGO report are youth care, child abuse and neglect, poverty, aliens policy, education, juvenile justice, participation, development cooperation, leisure time and space, and sexual exploitation. The latter subject is reviewed in a separate section in view of the report on the Dutch implementation of the Optional Protocol to the Convention of the Rights of the Child on the sale of children, child prostitution and child pornography, which was ratified by the Netherlands in 2005.

Each section on the separate subjects begins with an introduction, the recommendations the UN Committee on the Rights of the Child submitted to the Dutch Government in 2004, and an indication of the manner in which the relevant recommendations have been followed up. The sections then continue with a summary of the major developments in the relevant field, and the Dutch NGO Coalition for Children's Rights' concerns. These concerns ultimately result in new recommendations to the Dutch Government. A separate section lists all the recommendations from 2004 and the major developments with respect to each development. A further section lists all the Dutch NGO Coalition for Children's Rights' new recommendations to the Dutch Government.

The terms 'children', 'minors', 'juveniles' and 'young people' are used interchangeably throughout this report. All these terms have the same meaning, i.e. they refer to persons under the age of eighteen.

This report relates to the implementation of the Convention in the territory of the Kingdom of the Netherlands in Europe. Separate NGO reports shall review the situation of children in the Netherlands Antilles and Aruba.

This report was prepared by an editorial board set up by the Dutch NGO Coalition for Children's Rights. The report was drawn up in close collaboration with the many organizations involved. The responsibility for the report lies with the Dutch NGO Coalition for Children's Rights' core group of members, namely *Defence for Children International Nederland*, *Unicef Netherlands*, *Stichting Kinderpostzegels Nederland* ('Foundation for Children's Welfare Stamps Netherlands'), *Plan Nederland*, *Jantje Beton*, the *Landelijke Vereniging van Kinder- en Jongerenrechtswinkels* ('Dutch Association for Child and Youth Legal Advice Centres'), the *Nationale Jeugdraad* ('National Youth Council') and *Save the Children Nederland*.

This NGO report is not intended to serve solely as a reflection document for the UN Committee on the Rights of the Child; it is also intended to promote attention and action for the rights of the child in the Netherlands. The report is published in Dutch and English.

The organizations listed at the beginning of the report endorse the general content of the NGO report.

1 Introduction

A review of the past five years from the perspective of the rights of the child gives a general impression of more than four years of stagnation and reticence which is compensated by expectations of new prospects for the future.

Minister for Youth and Family Affairs

Although the Dutch NGO Coalition for Children's Rights is not enthusiastic about the period from 2002 to 2006, it nevertheless has high expectations for the future in view of the fact that a special Programme Minister for youth policy took office in February 2007. This is the first time that a minister is entrusted with youth policy (although state secretaries with coordinating duties were appointed during the past decades). It is also striking to note that the Minister for Youth and Family Affairs has not been assigned any other portfolios and, consequently, can concentrate fully on youth policy.

It is also promising to note that the Minister's youth and family policy programme presented in July 2007 states that the policy will be based on the CRC. In so doing, the Minister confirms that youth policy and the rights of the child are coincident terms.

However, there is criticism of the bandwidth of the portfolio and the 'virtual nature' of the Programme Minister's Ministry. This latter criticism is based on the fact that the Ministry of Youth and Family Affairs is housed in the premises of another Ministry, and that part of the administrative structure is also 'borrowed' from other ministries. The Dutch NGO Coalition for Children's Rights would welcome a reinforcement of this structure, in particular to ensure that the new Ministry is future-resistant. It would be a major setback for youth policy if the ministry for youth policy were to last for just one government's term of office. These concerns are further fuelled by recent criticism by the Netherlands Court of Audit ('Algemene Rekenkamer') regarding the low effectiveness of the Programme Ministry to translate policy intentions into concrete action.

The youth and family policy programme presented to the Dutch Parliament in July 2007 is both ambitious and broad. The policy programme incorporates a number of issues the Dutch NGO Coalition for Children's Rights has advocated for many years, such as the plan of action for child abuse, the attention for the professionalization of the youth sector, the creed *Eén gezin, één plan* ('One family, one plan'), the promise to tackle the waiting lists for psychosocial or behavioural treatment for youth and, for example, the proposal that children who have been taken into foster care will receive clarity within a two-year period about where they will spend the rest of their childhood. However, it is extremely disappointing to note that the programme does not refer to the appointment of a Children's ombudsman. The programme also lacks a statement about the introduction of a mandatory obligation to report child abuse and neglect. In addition, the Dutch NGO Coalition for Children's Rights misses specific plans relating to youth participation and a powerful impetus for youth work (child, teenage and young people's work), one of the basis provisions for neighbourhood children and young people. The policy programme lacks sufficient detail and specific plans. The Dutch NGO Coalition for Children's Rights will keep close track of the implementation of the policy programme over the next four years.

The Dutch NGO Coalition for Children's Rights is pleased that the Parliament has set up a youth and family committee, a long-felt wish of the Dutch NGO Coalition for Children's Rights.

Information

Although the concept of the rights of the child is being increasingly adopted by society, this does not imply that the concept is a guiding principle in political terms. The increasing awareness of the rights of the child results in the somewhat paradoxical situation of an increasing need for knowledge about the Convention on the Rights of the Child. This need is felt at a wide variety of levels, in the education sector, the judiciary, and in the youth care sector.

Case law

Case law exhibits favourable and unfavourable developments. Lawyers increasingly invoke the CRC, although frequently without success. Jurists still have very little knowledge of the CRC – notwithstanding the Dutch NGO Coalition for Children's Rights' publication, with Government

support, of a comprehensive *internationaal jeugdrecht* ('international youth law') manual, in November 2005, specifically for jurists that gives information about the CRC, as well as numerous other international conventions and documents relating to the position of minors. The Dutch NGO Coalition for Children's Rights has regularly produced updates of the international youth law manual.

The meaning of the CRC has yet to be reflected in case law. The Dutch NGO Coalition for Children's Rights is the most concerned about the interpretation of the CRC by the highest administrative court, the Judicial Division of the Council of State ('Raad van State'). Without a great deal of argumentation the direct effect of a number of the key articles of the CRC (Article 2 of the CRC concerning non-discrimination and Article 3 of the CRC concerning the interests of the child) has been denied, and this whilst other highest courts of justice (the Supreme Court for penal law and family law and the Central Court of Appeal for social security matters) recognize and *do* provide more scope for the realization of the rights of the child. The Dutch NGO Coalition for Children's Rights invites the UN Committee on the Rights of the Child to give an explicit opinion on this situation in its recommendations to the Dutch Government. Although we are aware that the Dutch Government has to respect the separation of powers, we make this request since it is important that the highest administrative court of justice is informed that its interpretation of the CRC does not receive international appreciation.

Decentralization

A problem that has yet to be resolved in the application of the rights of the child in the Netherlands is the implementation of the CRC by the provinces and municipalities. The provinces and municipalities are increasingly accepting the CRC as the basis for their policy, and significantly more aldermen for youth policy have taken office since the last local elections. The Dutch NGO Coalition for Children's Rights contributed to this development in the form of the Kids Count project whereby a ranking was compiled of all municipalities (in 2006) and of 12 provinces (in 2007) on the basis of a number of indicators which, in combination, give an impression of the situation in the relevant municipality or province.

However, the issue that has not been resolved is the Central Government's responsibility for CRC implementation relating to matters decentralized to the provinces and municipalities. These include youth care (to the province), reporting and responding to child abuse (to the municipal level), and the establishment of youth and family centres (municipal level). The Government no longer has control of these decentralized matters, even though the Government bears responsibility on the ground of international obligations, i.e. the CRC. An example is the right to play. Article 31 of the CRC places the Government under the obligation to offer children an opportunity to play – surely an example par excellence of the rights of the child. However, there is no central direction; the Government does not even have any information (relevant statistics inclusive) about play areas in the Netherlands.

2 Youth care, family situation and alternative care

Article 3, paragraph 2

States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Introduction

Bringing up children is not a sinecure, and external interventions, of either a voluntary or compulsory nature, may be required. Nearly 20% of children in the Netherlands are confronted with problems, and some are in need of some form of youth care. This youth care is, according to the prevailing Youth Care Act in the Netherlands, defined as (translated from the original Dutch): 'the provision of support and assistance to young people, their parents, stepparents or others who care for and bring up a young person as a member of their family in the event of problems in rearing or bringing up that person or the threat of problems of such a nature'. Consequently 'youth care' is given a wide definition and encompasses voluntary youth care, judicial youth care, youth mental health care, and care for the slightly mentally disabled.

The majority of youth care is provided on a voluntary basis, and the parents and/or their child or children receive help in forms such as assistance in rearing children or pedagogical support for a given period of time. However, on occasion the provision of youth care on a voluntary basis is inadequate, and a more intensive form of youth care is required to remove the threat to the development of the child. This can, for example, be the case in the event of physical or sexual abuse, or neglect. The juvenile court then issues a child protection order, as a result of which the authority of the parent(s) is restricted for a longer or shorter period of time and is transferred to a Youth Care Office. A family supervisor implements the child protection order.

At least 150,000 children in the Netherlands are in need of some form of youth care. 26,000 professionals work in the youth care sector, which requires funds of approximately 1 billion euros.

2.1 Recommendations from the UN Committee on the Rights of the Child, 2004

Recommendation 9 from the UN Committee on the Rights of the Child, 2004

Recommendations that have not or inadequately been followed up

No or inadequate follow up has been given to the recommendation to devote attention to alternative care and the need to seek alternatives for residential institutions.

Recommendation 15 from the UN Committee on the Rights of the Child

Youth Commissioner (general implementation measure)

The Youth Commissioner should assume the responsibility for the coordination between the national and local authorities involved in youth policy and ensure that they are allocated sufficient resources. An evaluation of this role should be carried out with a view to establishing a permanent mechanism to coordinate the implementation of the CRC.

Recommendation 25 from the UN Committee on the Rights of the Child

Data collection (Article 4 of the CRC)

The Dutch Government should develop a system of data collection for children. This system

should pay particular attention to vulnerable groups of children, such as children in youth care, victims of abuse, sexual exploitation and trafficking, and children in conflict with the law. The resulting data should be used as the basis for policy development.

Recommendation 40 from the UN Committee on the Rights of the Child

Youth care: waiting lists and funding (Article 18 of the CRC)

The Dutch Government should carry out an evaluation of the services available to parents to assist them in their child-rearing responsibilities, in order to determine the cause of waiting lists in the Netherlands and assess the quality of the services provided. The Government should increase the funding for childcare facilities and services, and support parental education programmes.

Recommendation 42 from the UN Committee on the Rights of the Child

Alternative care (Article 20 of the CRC)

The Dutch Government should expand alternative care by measures such as funding foster care (financial assistance for foster care families).

Recommendation 59 from the UN Committee on the Rights of the Child

Juvenile justice (Articles 37, 40 of the CRC)

The Dutch Government shall ensure the full implementation of international juvenile justice standards. The legislation must be amended such that life imprisonment cannot be imposed on anyone between the age of 16 and 18. The detention of juvenile offenders may be used only as a measure of last resort. The Dutch Government must avoid the placement of juvenile offenders together with children institutionalized for behavioural problems.

Follow-up given to the recommendations

Recommendation 9

Although extra funds have been made available for placing children in foster families, youth care still focuses largely on placing children in residential institutions.

Recommendation 15

A Youth Commissioner was appointed during the period from 2004 to 2007 to further the coordination between the ministries and the national and local authorities. However, this has not resulted in the establishment of a permanent mechanism to test the implementation of the CRC. A test of this nature does not take place in the Netherlands.

Recommendation 25

Work has begun on the development of a Youth Monitor that will be made available in 2007. It is expected that the knowledge of young people provided by the Youth Monitor will simplify policy assessment and development.

Recommendation 40

The Netherlands does not have appropriate insight into the availability of parenting support. The reach and effect are not clear.

Recommendation 42

Although the financial supplement has been increased for the foster parents of children in a crisis situation, children with a disability and children in large families, the main focus of Dutch policy on placing children is still intramural care.

Recommendation 59

During the period from 2007 to 2010 all closed institutions will be divided into institutions for children placed under civil law and those for children placed under penal law. Since 1 January 2008 the amended Youth Care Act provides for separate closed youth institutions for civil law placements (protection). Children who are protected under civil law and children who are placed under penal law are now separated and placed in different closed institutions with different regimes.

2.2 Trend

During the past years the theme of youth care was the development of the Youth Care Act, is coming into force on 1 January 2005, and its effect. This Act is intended to provide clients with low-threshold and recognizable access to youth care services; each province has one counter, the Youth Care Office, which clients can contact when they require youth care services. The Act is intended to improve the clients' position by various means, including:

- A statutory and enforceable right to youth care;
- Focusing on the clients' needs and not on the availability of help (a demand-driven system rather than a supply-driven system);
- The statutory obligation to provide for an independent Complaints Committee, client participation, and the deployment of a Counsellor to support the clients with advice on their legal position and in complaint procedures so as to reinforce the clients' position.

A number of issues characterizing the past years:

Waiting lists for youth care

Both the Youth Care Offices and the institutions in which children can be placed operate waiting lists. Children who must be removed from a threatening situation within their home and are in need of a specific form of care have to wait months for help. Alternative care is offered, but usually it is not compatible with the child's problem.

Heavy caseload of family supervisors

In the Netherlands the number of requests for help from children and their parents is increasing each year. The judicial youth care sector, the more intensive form of youth care, has for many years been confronted with a 10% increase in the number of orders. Moreover, in addition to the increase in the number of orders, the nature of the problems giving cause to those orders is also becoming more severe and diversified. Child care orders are becoming increasingly common. The family supervisors have an extremely heavy caseload, and they often supervise more than 20 children and their families. As a result of these caseloads they have too little time to see the children and supervise their circumstances.

Decentralization of youth care

When the Youth Care Act came into force, youth care was decentralized from the Government to the provinces, and as a result the provincial Youth Care Offices constitute the sole access to youth care. The client has no freedom of choice.

2.3 The Dutch NGO Coalition for Children's Rights' concerns

The underlying principles of the Youth Care Act are good. The low-threshold and recognizable access to youth care offered to children and their parents, the statutory right to youth care and the customized availability of care constitute an excellent basis, and can reinforce the clients' position. However, in practice the Youth Care Act does not (yet) exhibit an appropriate performance. The existence of long waiting lists, the continually growing number of child protection orders, the continually increasing severity of the problems and the increasing figures for juvenile crime and multi-problem families give cause to doubts about the effectiveness of the system. The issue giving greatest cause for concern is that to date the Youth Care Act has failed to improve the clients' position. Consequently the Act's objective has not yet been achieved, and the clients do not seem to have benefited from the implementation of the Act.

The Dutch NGO Coalition for Children's Rights' specific concerns

The right to youth care has not been substantiated

The waiting lists are still very long. These waiting lists give cause to major hazards and risks, since children who are in danger or under threat are left at home without the necessary supervision. The children's (behavioural) problem and disturbance are then exacerbated, with all the concomitant problems (Article 3, paragraph 2, and Article 39 of the CRC).

Excessive caseloads of the family supervisors

The enormous work pressure results in staff who are under great strain and absenteeism. This in turn puts the continuity of the aid in jeopardy, a situation which has an immediate detrimental

effect on the aid provided to the clients. The Youth Care Act has resulted in a great increase in bureaucracy, which in turn also results in too few face-to-face contacts with the clients. It is impossible to carry out the statutory supervisory duty in the appropriate manner (Article 3, paragraph 2, and Articles 18 and 39 of the CRC).

Treatment of children placed in an institution under civil law

The Dutch NGO Coalition for Children's Rights is concerned about the treatment required by children who are placed in closed youth care institutions on civil-law grounds. Many of these young people have serious behavioural problems that require treatment. However, there is an insufficient number of adequately-trained staff. In addition, the waiting lists and the excessive burden imposed on the staff also delay the initiation of treatment designed to tackle the children's problems. At this moment it is not apparent that this situation will improve by the separation of children placed under civil law from those placed under penal law (Article 3, paragraph 2, and Article 39 of the CRC).

In January 2008 the Youth Care Act was amended and led to the separation of children placed under civil law (protection) from those placed under penal law in closed youth care institutions. Now, some months after this amendment, it has become clear that not enough places are available for youngsters placed under civil law in closed youth care institutions. Therefore, this group of youngsters who are in need of protection and treatment is still placed in a criminal law setting. They often have to wait for many months before treatment is available. Due to a shortage of closed youth care institutions, the amended law that required the youngster's permission for a placement in a closed care institution with a criminal law regime, instead of placement in a closed youth care institution, has already been changed into a system in which youngsters can be placed in these institutions without their consent until 2010.

Furthermore, there are concerns about the treatment climate in the new closed care institutions. Recent research of the Inspectorate of Youth Care shows that treatment plans are not sufficiently individualized and that the permissible interferences in the liberty rights of these youngsters are applied to the maximum extent, whilst they should only be restrictedly applied. There are also concerns about the new possibility to place youngsters from 18-21 years of age in closed youth care institutions without their consent when this is their parents wish. This is not in accordance with Article 3 of the CRC – like the legislator mentioned - but a breach of human rights of young adults, because Article 3 of the CRC only applies to children under the age of 18.

Foster care

The restricted opportunities for places in foster care – including restricted funding – continue to give cause for concern. From a pedagogical perspective it is often preferable for children who cannot live at home for a shorter or longer period of time to be placed in a foster family. The rights of foster parents are currently being given consideration, and are being laid down in law. The discussions about the rights of foster parents versus the rights of the biological parents may not place the rights and position of the relevant child (in the middle) in jeopardy, and it is important that the children are involved in these discussions (Article 3, paragraph 2, and Articles 9, 12, 20 and 25 of the CRC).

Concerns about extremely vulnerable groups of children

The extremely vulnerable groups relate, in particular, to children with a disability and children in need of mental health care. As a result of the excessive burden imposed on the sector, 120,000 of the 200,000 children with psychological problems causing dysfunction in their everyday life do not receive adequate help. Moreover all young people must gain access to youth care via one counter (the Youth Care Office). This means that the aid provided to children with a mental disability will be focused on problems of a temporary nature. This in turn results in the structural negation of the severe and chronic nature of their disability (Article 3, paragraph 2, and Articles 23 and 39 of the CRC). See also the section on Child abuse.

Legal assistance and participation for children and their parents are inadequate

The Government has also assigned the responsibility for legal assistance with the provinces. The development of such legal assistance, such as the *Kindertelefoon* ('childline') or *Kinder- en Jongerenrechtswinkel* ('children's law centres') has been given virtually no shape. The frequent absence of client councils and counsellors for the – young – clients is not beneficial to the improvement of the clients' position (Article 3, paragraph 2, and Articles 12 and 39 of the CRC).

Continuing decentralization of youth care

Discussions are currently in progress as to whether youth care should be transferred to the municipalities to bring the care closer to the client and thereby offer an opportunity to provide preventive youth care in an earlier phase. Transferring this care to the municipalities would result in even further decentralization. At present it is still unclear which duties would be assigned to the local *Centra voor Jeugd en Gezin* ('Youth and Family Centres'), which would remain with the Youth Care Offices, and how clients would be transferred to the more intensive forms of youth care (Article 3, paragraph 2, and articles 18 and 39 of the CRC).

2.4 Recommendations to the Dutch Government

2.1 Above all, the Dutch NGO Coalition for Children's Rights emphatically requests the Dutch Government to base youth care on the Convention on the Rights of the Child, and to recognize the right to youth care as a fundamental right. In continuation of the issues stated under 'The Dutch NGO Coalition for Children's Rights' concerns' the Dutch NGO Coalition for Children's Rights also submits the following recommendations:

Article 3, paragraph 2, and Article 39

2.2 Guarantee the right to youth care. Make every possible effort to eliminate the waiting lists.

Article 3, paragraph 2, and articles 18 and 39

2.3 Guarantee a reduced caseload. Make arrangements for more contact opportunities with the clients and less bureaucracy for the family supervisors. Develop and introduce ethical rules or a professional code of conduct in the sector, and create opportunities for professionalization.

Article 3, paragraph 2, and Article 39

2.4 Make sure that the help children in closed youth care institutions require begins on time and is tailored to their needs.

Article 3, paragraph 2, and Articles 9, 12, 20 and 25

2.5 Focus foster care on the child. Create the statutory and policy-based conditions required for foster-care children's feelings of security, in particular continuity, contact and identity. Involve the young people in decisions of relevance to them.

Article 3, paragraph 2, and Articles 23 and 39

2.6 Create more treatment places for vulnerable groups of children, and make sure that the treatment is tailored to their needs and begins on time.

Article 3, paragraph 2, and Articles 12 and 39

2.7 Improve low-threshold legal assistance and client participation. Appoint a Children's ombudsman. Learn from the experiences of children, and involve them in decisions of relevance to them.

Article 3, paragraph 2, and Articles 18 and 39

2.8 Make sure that there is clarity in the division of duties between the *Centra Jeugd en Gezin* ('Youth and Family Centres') and the Youth Care Offices

2.9 Make sure that a coherent prevention policy is developed and implemented. Guarantee a smooth transfer from the *Centra Jeugd en Gezin* (Youth and Family Centres) to the more intensive forms of – specialized – youth care. Do not allow the clients to suffer from an additional administrative layer in youth care.

3 Child abuse

Article 19

Children shall be protected from all of forms physical, mental and sexual abuse in and outside their family. The State is responsible for prevention and treatment.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Introduction

A recently published study has revealed that many more children in the Netherlands are abused than had previously been assumed¹. The former estimate of 50,000 to 80,000 cases of child abuse per annum should now be replaced by a minimum of 106,000/160,000 cases of child abuse per annum, i.e. double the former estimate. This is the first time a study has been carried out into the number of cases of child abuse in the Netherlands. The figures revealed by this study have deeply shocked Dutch society, as well as public authorities and NGOs. It is estimated that abuse results in the death of between 50 to 80 children a year. It is humiliating to be forced to conclude that a rich country like the Netherlands has so many thousands of children who are victims of child abuse.

3.1 Recommendations from the UN Committee on the Rights of the Child, 2004

Recommendation 44: The Committee recommends that the State party:

- a) ensure that there is a clearly defined policy on child abuse and neglect, which includes prevention, reporting and assistance to victims and is supported with adequate financial and human resources, in both the Netherlands and Aruba;
- b) ensure that, in the Netherlands, the Youth Act conforms with the provisions and principles of the Convention and expedite its entry into force;
- c).....;
- d) explicitly prohibit corporal punishment in law throughout the State party and carry out public education campaigns about the negative consequences of ill-treatment of children, and promote positive, non-violent forms of discipline as an alternative to corporal punishment.

Follow-up given to Recommendation 44

The recommendation to ensure for a clearly defined integral policy on child abuse has not been followed up. Inadequate financial and human resources have been made available for a structural approach to the problem in the Netherlands. The Youth (Care) Act is reviewed in this report's section on Youth care.

The recommendation to prohibit corporal punishment by law has been followed up in the sense that the Civil Code was amended in 2007. The amendment states (translated from the original Dutch): Book 1, Article 247: "caring and rearing are also understood as the care of and responsibility for the mental and physical well-being and safety of the child, as well as the promotion of the development of the child's personality. In caring and rearing the child, the parents may not use any mental cruelty or physical force, or any other form of degrading treatment."

The recommendation to carry out public education campaigns about the negative consequences of the ill-treatment of children, and promote positive, non-violent forms of discipline has not been followed up.

Comment on the concluding remark made by the UN Committee on the Rights of the Child in 2004

Concluding remark No. 43 (2004):

The Committee notes with satisfaction that, in the Netherlands, the Youth Care Act, which aims to improve the effectiveness of child protection services and includes the obligation for medical personnel to report suspected cases of child abuse, has been passed by the lower house of Parliament and is awaiting the approval of the Senate.

The Committee incorrectly states in this passage that pursuant to the Youth Care Act medical personnel are *obliged* to report suspected cases of child abuse. The Youth Care Act does *not* place medical personnel under the obligation to report suspected cases of child abuse. The Youth Care Act does include a provision stipulating that everyone bound by professional secrecy has the *right* to break their professional secrecy to report a suspicion of child abuse or have the child abuse stopped. However, child abuse reporting codes have been introduced that professionals must observe within institutions.

3.2 Trend

Child abuse has received continually increasing attention from the public during the past years, and child abuse is generally regarded as a serious social problem. However, to date the Dutch Government has not given an adequate response to this problem. Although a 'prohibition of the use of violence in child-rearing' clause was incorporated in the Civil Code in 2007, the problem is still very great. The fact is that many more children are mistreated, abused or neglected than we believed until recently, and that there is a serious shortage of the basic facilities needed to protect all these children and prevent or stop child abuse. Consequently, a large group of children in the Netherlands continue to suffer from a shortage of help, or appropriate help that comes too late.

A number of developments characterizing the past years:

Increase in the number of reports of child abuse

The number of reports of suspicions of child abuse has exhibited a substantial increase during the past years (a 27% increase in the period from 2003 to 2005, according to information from the records of the Advice and Reporting Centres for Child Abuse and Neglect). Although it is gratifying to note that people know of the Advice and Reporting Centres for Child Abuse and Neglect, it is at the same time sad to note that many children are still not reported or that the help is provided too late. More rapid identification and intervention in the event of suspicions of child abuse is necessary.

Increase in the number of families living below the poverty line

The Dutch Poverty Monitor reveals that a continually increasing percentage of children grow up in poor families (on or below the poverty line). Insufficient income, no or poor access to the labour market, and limited schooling are regarded as major risk factors for poverty. There is an evident relationship between combating poverty and combating child abuse. A recent study of child abuse in the Netherlands (Van IJzendoorn/Pinzie, 2005) reveals that unemployed parents and parents with little or no schooling are relatively more likely to commit child abuse. Consequently, in general the combination of an effective schooling and employment policy and a policy focused on combating poverty is one of the best methods of combating child abuse.

Waiting lists at the Advice and Reporting Centres for Child Abuse and Neglect and Youth Care Offices

The Youth Care Act came into force on 1 January 2005. The Advice and Reporting Centres for Child Abuse and Neglect, Youth Care Offices and providers of youth care are confronted with waiting lists.

Recognition of the problem, but no concrete results of a national plan of action

The Dutch Government recognizes that child abuse is a serious social problem. In 2007 a national plan of action to deal with child abuse was announced. The implementation of this national action plan is still being prepared.

Although a child abuse reporting code has been introduced no review has been carried out to determine whether the code is actually used within institutions. Many professionals working with children every day (teachers, instructors, daycare centres leaders, doctors, social workers) still

do not know what to do in the event of suspicions of child abuse.

The waiting lists for children who have been reported are still too long – inclusive of the lists of the children and parents who need help once child abuse has been observed. The waiting time at the Advice and Reporting Centres for Child Abuse and Neglect can range from two weeks to six months. The period from the initial indication to a judicial order with the associated social aid can be as long as eighteen months.

The Dutch government has announced that the work method of the RAAK regions (pilots), that has proven to be successful, will be nationally implemented from September 2008. A national action plan to combat female circumcision will also start after the pilots are finished (end of 2008). Still there are already concerns that there will be a shortage of financial means to realize the ambitions of the RAAK method in practice.

A hospital screening instrument to identify child abuse is still not widely used.

Child abuse is insufficiently identified, recognized and dealt with by professionals

The education and healthcare sectors report too few suspicions of child abuse to the Advice and Reporting Centres for Child Abuse and Neglect. Many professionals are still unaware of and/or too timid to take the actions required for effective intervention in the event of suspicions of child abuse. Professionals require specific schooling in the identification and approach to child abuse. To date the inclusion of child abuse as a standard element of the curricula of vocational courses for teachers, daycare centres leaders, doctors (of medicine)/GPs, social workers, nurses, etc., has proven unsuccessful. Paediatricians have recently begun an additional mandatory practical refresher course. Some schools and hospitals have introduced a child abuse reporting code; self-evidently these reporting codes are of importance – but they also have to be used. Health insurance companies reimburse virtually none of the efforts paediatricians/hospitals make in combating child abuse, even though this prompt response results in substantially reduced costs by virtue of the prevention of later health problems and social damage. All hospitals need to set up interdisciplinary transmurals teams.

Child-abuse public information campaigns

A high level of awareness and the provision of information are both essential to success in combating child abuse. Members of the general public need to know that they can contact an Advice and Reporting Centre for Child Abuse and Neglect and that they can personally be of assistance to a child in their surroundings. During the past years a number of major child-abuse information campaigns have been organized, largely on the initiative of the NGOs, to increase the general public's awareness of the problem. The authorities do not make any structural efforts in this field.

Pilot programmes and the development of methodologies

A large number of methodologies relating to parenting support and dealing with child abuse and (effect) studies have been developed in the Netherlands in the past years. Consequently, a large number of trial projects and programmes have been carried out, and an overview is now available of evidence-based programmes. However, the availability of all these programmes has not yet resulted in a structural approach to preventing and combating child abuse. The primary need is a clearly defined basic package available to all children and parents in every municipality. It is now time for the Government to choose from the abundance of best practices, trial regions, *evidence-based* programmes and occasional parenting support impetuses and then implement *one* national programme of benefit to all children in the Netherlands. All children in the Netherlands must be offered a structural basic package which protects them from mistreatment, neglect and (sexual) abuse. This also means that all parents will need to repudiate violence in child rearing and regard parenting support as self-explanatory.

Help for the children relates to:

- help to prevent or stop abuse;
- help to their parents in changing their approach to child-rearing (basic help);
- therapeutic help to the parents when their hard-handed and neglectful child-rearing is in part due to psychological problems.

3.3 The Dutch NGO Coalition for Children's Rights' concerns

A national basic package focused on preventing and combating child abuse is lacking. Although we know which methods and which interventions are effective, they are not deployed and implemented on a broad scale.

Unclear division of responsibilities between the Government, provinces and municipalities relating to combating child abuse.

The decentralization from the Government to the provinces and municipalities offers opportunities to shirk responsibilities and precludes the preparation of a uniform and clear plan that offers protection to all children in all provinces and municipalities. Insufficient use is made of parenting support as a means of prevention. Too much depends on the chance knowledge and involvement of municipalities. No choice is made to offer effective methods of parenting support to children and parents throughout the country. The youth health care services are often referred to as the most important agency in identifying and combating child abuse. However, this organization is severely understaffed, and it lacks the resources required to fulfil this duty in an appropriate manner.

Professionals are not obliged to report child abuse and not obliged to intervene.

(Medical) aid workers can exercise their discretion in deciding whether to intervene in suspected child abuse. They are neither obliged to report nor intervene in parenting situations which give cause for concern. Although child abuse reporting codes have been introduced, they are infrequently used or aid workers have not been trained to use them.

The Government too frequently opts for 'stopgaps' as the occasion arises rather than structural solutions

All too often dealing with child abuse is characterized by ad-hoc reactions to serious child abuse incidents that have resulted in death. The waiting lists at the Advice and Reporting Centres for Child Abuse and the aid agencies that work with them are also tackled using sporadic resources. All too often the Government opts for short-term solutions based on non-recurrent funding. The Advice and Reporting Centres for Child Abuse are confronted with a structural lack of capacity.

Too much bureaucracy and a lack of collaboration

Children and parents become entangled in the web of aid agencies; during the resulting delay before they receive the aid they require the abuse can then continue – often with fatal consequences. There is a lack of collaboration, and all too often clients are transferred to yet another organization that begins with yet another investigation. This often results in a failure to intervene in time. The staff have to spend too much time entering and recording data.

A central direction of the process is lacking.

Professionals are not trained adequately in recognizing and combating child abuse

Aid organizations devote too little attention to quality. The Youth Care Office's diagnostics and risk assessments are sub-standard. Child abuse is not a standard element of the curricula and attainment targets of the vocational courses for professionals who will work with children. In addition, it is important that professionals are aware that exchanging information about children in the event of suspicions of child abuse is *not* in conflict with privacy legislation or their professional secrecy.

No structural public information campaign focused on the prevention of child abuse

There is no accompanying permanent campaign to support the prohibition of violence in child-rearing. Parents receive too few tips to learn how to use positive attention in influencing children's conduct. There are no permanent prevention of child abuse campaigns focused on professionals and children.

Too little attention given to extremely vulnerable children

Children living in poverty run a relatively great risk of being mistreated, abused or neglected. Studies have revealed that the percentage of children suffering abuse is inversely proportional to their parents' level of education, workload and, in general, income. The number of children in the Netherlands who live on or below the poverty line has increased in the past few years, and consequently this is a development which gives cause for concern.

Children in asylum-seekers centres run a much greater risk of physical mistreatment, neglect, sexual abuse and mental cruelty than other children. Their accommodation is poor, there is little or no privacy, and their parents are on occasion traumatized and sometimes take out their problems on their children. The asylum procedure devotes too little attention to children. Children remain in uncertainty for too long. Applications for a residence permit can take years to complete. On occasion they have difficulty in gaining access to youth care services. Their many changes of address contribute to the children's uncertainty and lack of roots. Institutional neglect would appear to be an issue – and this whilst the authorities are responsible for an appropriate reception of asylum seeking children.

Children with a (slight) mental disability run an increased risk of mistreatment and (sexual) abuse, as well as bullying. Aid workers have difficulty in dealing with instances of sexual abuse in this category of children, and consequently the continuity of the care provided to them and their parents is essential. This is not the case at present. Parental support is not provided with the necessary continuity, and different agencies provide support at different times. Acquired skills such as assertiveness skills are lost rapidly when support is not provided on a permanent basis.

Children in sheltered homes run a greater risk of mistreatment by other children in the homes. Sexual abuse, bullying and intimidation are frequent. Children in these sheltered homes have already suffered from abuse, neglect or other problems, and consequently they require additional help. The risk of abuse of this nature increases when children with a (slight) mental disability live with young people with behavioural problems.

Children with a chronic illness, premature babies, children with behavioural problems, and children with an addicted parent or a serious mental disorder run a greater risk of abuse. At present insufficient use is made of preventive activities such as early risk assessment and specific treatment.

Too few prosecutions of child abuse

It is striking to note that there are few child-abuse prosecutions in the Netherlands in relation to the total number of cases of child abuse. However, exact data about this issue are unavailable. For example, it is not known how many cases of observed child abuse are reported or which cases result in prosecution. In addition, it is unknown which form of punishment of the parents (the offenders) actually has an effect and, at the same time, is also in the interests of the child (the victim).

It is important that more information about this is made available, and that a debate is conducted on the issue.

Need for a National Children's ombudsman

There is still no national ombudsman for child victims of abuse to contact in order to complain about lacking protection. Recently, a discussion started about the possibility to position a Children's Ombudsperson at the Dutch National Ombudsman.

3.4 Recommendations to the Dutch Government

Article 19

3.1 Make arrangements regarding the obligation of professionals to report and to intervene.

3.2 Lay down by law that reporting (suspicions of) child abuse is a professional obligation on all those who work with children within the context of their profession, and a civic obligation on all members of the public who observe or have serious suspicions of child abuse in their surroundings. Impose a statutory obligation on all aid workers to intervene in the event of suspicions of child abuse².

Article 39

3.3 No children on the waiting list! Make sure that immediate and adequate action is taken in the event of suspicions of child abuse

3.4 Guarantee immediate help on receiving a report of a suspicion of child abuse. Make sure

that the Advice and Reporting Centres for Child Abuse has sufficient staff and resources to cope with the increasing number of reports. In addition, make sure that no children referred to an aid agency end up on a waiting list. In other words, additional, structural resources are needed to tackle the problem in an integral and professional manner.

3.5 Make sure that all regions can offer adequate aid to neglected, mistreated and sexually-abused and/or exploited children, their brothers and sisters, and to the perpetrators of mistreatment/sexual misuse

3.6 Avoid bureaucratic regulations and make provisions for the national implementation of methods that are known to be of help in preventing and combating child abuse. Provide for regional multidisciplinary centres for reporting, diagnosing and treating/giving therapy for child (sexual) abuse which are staffed by highly-trained professionals specialized in all fields that can be involved in child (sexual) abuse.

Article 3

3.7 Provide for the professionalization and schooling of practitioners, and the payment of their efforts.

3.8 Make sure that all vocational courses for teachers, daycare centres leaders, doctors and aid workers who will deal with children and parents include the child abuse problem in their curricula and attainment targets. Impose a requirement on all youth care institutions stipulating permanent schooling and training in the identification, diagnosis and treatment of child abuse, and arrange the associated funding. When doing so devote additional attention to aid workers helping children with a (slight) mental disability, and to aid workers helping asylum seeking children, children with behavioural problems, chronically ill children, premature babies, cry babies and (children of) parents with mental problems or problems with substance abuse. Make sure that all hospitals set up interdisciplinary transmural child-abuse teams capable of providing for identification, diagnosis, treatment and intervention. Arrange the efficient use of reporting codes at institutions and supervise their use.

Article 19

3.9 Fund programmes designed to prevent child abuse.

3.10 Make parenting programmes available for all (expectant) parents provided by the Youth and Family Centres, with special attention to high-risk families. Make sure that these have a low threshold and are readily accessible to all segments of the public. Link these programmes to public information campaigns designed to ensure that (expectant) parents regard parenting support as self-explanatory.

3.11 Arrange regular and recurrent public information campaigns. Organize a continual information campaign relating to the section of the law on the prohibition of violence in child-rearing included in Book 1, Article 247 of the Civil Code. This campaign should give parents advice about positive forms of the correction of children's conduct. In addition, organize a regular and recurrent campaign focused on children suffering abuse of a form comparable to the *Over sommige geheimen moet je praten* ('You have to talk about some secrets') campaign (1991). In conclusion, at least arrange an annual public information campaign designed to increase the awareness of the general public. This campaign must make clear what people can and must do when they suspect child abuse.

Article 19 of the CRC: Do not allow privacy legislation to be an impediment to combating child abuse.

Issue clear information to all groups of professionals which explains the opportunity to exchange data to protect children.

3.12 Arrange a follow-up study of the nature and magnitude of child abuse. Request a four-yearly follow-up prevalence study into child abuse. Also ensure that a debate is conducted on the extent to which child abuse should be punished, and in which instances and in which manner prosecution is also in the child's interest.

3.13 Implement the recommendations in Paulo Sergio Pinheiro's The World Report on Violence

against Children.

Article 4

3.14 Appoint a Children's ombudsman

Appoint a Children's ombudsman immediately to as to provide a clearly recognizable and accessible government contact point who children can approach to have their say.

Articles 20, 22, 23 and 24

3.15 Protect more vulnerable groups of children such as children in asylum procedures, children with a (slight) mental disability, children at sheltered homes and children with a chronic illness. Arrange a multidisciplinary investigation during the asylum procedure which identifies the care needs of children and their parents, and make sure that asylum seeking children receive this care. Improve the conditions that can contribute to the prevention of child abuse and neglect at asylum seekers centres.

3.16 Arrange the provision by care institutions of care programmes for mistreated, neglected and sexually abused children, including children without a residence permit or without a stable home situation.

3.17 Arrange for continuity of parental support to the parents (with a slight mental disability) of children with a (slight) mental disability.

3.18 Ensure that the sector organizations' seal of approval for residential institutions includes guarantees for the safety of children. Special attention must be given to the prevention of mistreatment, bullying and abuse of children by other children or aid workers and the ability to refer children to appropriate aid.

4 Children governed by migration law

Introduction

During the past few years the additional protection refugees and asylum seekers' children should receive pursuant to the Convention of the Rights of the Child in the Netherlands came under great pressure. The civil-society organizations, in particular, continued to stand up for the rights of these children. The detention of children on the grounds of their residency status, the literal eviction of families on to the street once their application for a residence permit had been rejected, the intimidating police actions in collecting children in the middle of the night or from their class for detention for the purpose of deportation were illustrative of the Netherlands' harsh aliens policy. In addition to the children of asylum seekers and refugees, the realization of the rights of the child is also under pressure with a further group of aliens' children, namely those children without a residence permit – 'illegal aliens', 'aliens without documents'. These can be asylum seekers who have exhausted all legal remedies, or the children of migrants or minors who have arrived in the Netherlands without the necessary documents for family reunification.

This section reviews violations of the rights of children relating to three groups of children: children who have applied for asylum together with their parents, unaccompanied minor asylum seekers³, and minors without a valid residence permit. Sub-sections without a reference to a specific group relate to all children governed by aliens law.

4.1 Recommendations from the UN Committee on the Rights of the Child, 2004

Recommendation 31 from the UN Committee on the Rights of the Child

Combating discrimination (Article 2 of the CRC)

The Dutch Government must combat discrimination. The policy must pay particular attention to eliminating negative stereotyping of refugee and asylum-seeking children and address the root causes of de facto segregation in schools and localities.

Recommendation 54 from the UN Committee on the Rights of the Child

Refugee and asylum-seeking children (Article 22 of the CRC)

The Dutch Government should review the Aliens Act of 2001 and its application to ensure full conformity with international standards. The Dutch Government should change its definition of unaccompanied minors seeking asylum to as to bring it into line with international standards. The Dutch Government must ensure that the determination of the refugee status of minors conforms to international standards, and consequently reconsider the 48-hour accelerated procedure. The detention of children whose applications for refugee status have been rejected may be used only as a measure of last resort. They must receive adequate education and housing.

The Committee's recommendations related to Article 22 of the CRC, the special protection for refugee children. This report also relates to migrants' children.

Follow-up given to the recommendations

Recommendation 31

The Committee expressed its concerns about the harshening of Dutch society in its 2004 report. This has become even more marked in the intervening years. The use of stereotypes for persons of non-Dutch origin would appear to be becoming increasingly acceptable in public and political debates.

Recommendation 54a

Virtually no changes have been made to the Aliens Act of 2001, and consequently many concerns about the rights of the child have not been removed.

Recommendation 54b

The definition of unaccompanied minors seeking asylum was changed in July 2004⁴, and now

refers to a person below the age of 18 who is not married and is not accompanied by a parent or guardian (ministerial circular concerning aliens C2/7.1.2 and 7.1.3). Previously persons who, for example, had an older brother or sister or an aunt with them were not regarded as unaccompanied. The unaccompanied minor seeking asylum was then referred to as a *begeleide ama, (bama)*, ('supervised unaccompanied minor seeking asylum').

Recommendation 54c

The 48-hour accelerated procedure, also referred to as the 'AC procedure', is a procedure in which asylum seekers submit their first application for admission as a refugee. This procedure is carried out at an application centre (AC), and involves an assessment of the application within 48 processing hours. A number of organizations and committees have advocated the improvement, extension or full abolition of the 48-hour accelerated procedure (including the *Commissie Evaluatie Vreemdelingenwet* ['Aliens Act 2000 Evaluation Committee'], *Adviescommissie Vreemdelingenzaken* ['Advisory Committee on Aliens' Affairs'], Amnesty International and the Dutch Refugee Council). Pending the response to these recommendations the Dutch NGO Coalition for Children's Rights advocates that children, with or without their parents, should not be required to remain and be heard at an application centre: these centres are inadequately equipped to enable minors to prepare for an interview on their flight in a safe and calm manner.

Recommendation 54d

Although there has been a substantial decline in the number of children in detention for the purpose of deportation, it is still possible to lock up children in a cell on the grounds of their residency status. In mid-2006 an alternative to the detention of parents for the purpose of deportation was made available in the form of shelter locations where parents who have exhausted all legal remedies and are prepared to leave the Netherlands are offered an additional reception period. The Dutch NGO Coalition for Children's Rights (Dutch NGO Coalition for Children's Rights) is of the opinion that these facilities for rejected asylum seekers where they can prepare for their departure – the shelter locations – offer an alternative to detention for the purpose of deportation such that pursuant to Article 37b of the CRC it is unlawful to detain children for the purpose of deportation (see further under Deprivation of liberty), since detention is not then 'a *measure of last resort*'. However, the shelter locations do then need to be accessible to all families without a residence permit that are working on their return. At present they are accessible solely to asylum seekers who have exhausted all legal remedies. In addition, the Dutch NGO Coalition for Children's Rights is concerned about the fact that when children and their parents are released from detention they are usually literally turned out onto the street. The Government needs to provide alternative reception facilities. Consequently in the Dutch NGO Coalition for Children's Rights's opinion although the recommendation has been followed up in part the follow-up is still inadequate.

4.2 Trend

Harshening

The Committee expressed its concerns about the harshening of Dutch society in its 2004 report. This has become even more marked in the intervening years. The use of stereotypes for persons of non-Dutch origin would appear to be becoming increasingly acceptable in public and political debates.

Discrimination

Many violations of the rights of the child derive from the violation of the non-discrimination principle (Article 2 of the CRC). In some cases the courts rule that children without a residence permit do not fall within the scope of the CRC. The Government is of the opinion that the admission policy takes sufficient account of the Convention on the Rights of Children, as is illustrated by the response to the recommendations from the UN Committee on the Rights of the Child in which the Minister informed the Parliament that: "The parents of illegal children bear the primary responsibility for their children. This is also the case pursuant to the CRC. The State always serves as a last safety net. The State takes action solely in specific instances, for example when a child is in a situation such that a child protection order is required".⁵

One of the most harrowing consequences of this standard is the absence of an adequate

standard of living for children without documents. They end up on the street, without a roof and without money to buy food and clothing.

More stringent immigration policy

Another central factor was the harshening of the Netherlands' immigration policy. This harsher policy can have extremely drastic consequences for children, such as the threat of the separation of parents and their children when certain members of the family do not have a residence permit. This results in frequent violations of the principle that children must be able to live with their parents when this is in the children's interest (articles 9 and 10 of the CRC). The right to family life is often violated in the Netherlands.⁶

Children's ombudsman

The children of migrants and refugees lack a Children's ombudsman to look after their interests when the authorities violate their rights.

4.3 The Dutch NGO Coalition for Children's Rights' concerns

General principles

Non-discrimination principle

Article 2, paragraph 1

States Parties shall respect and ensure the rights set forth in the current Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Children without a residence permit

The Administrative Law Division of the Council of State, the highest court of justice in administrative law, has ruled in cases in which children without a residence permit invoked Article 2 of the CRC that the distinction between children with and without a residence permit is a real legal distinction that does not fall under the scope of Article 2 of the CRC, or in other words, the exclusion of children without a residence permit does not constitute discrimination.⁷ However, the converse is to be read in decisions of courts such as those of the Central Court of Appeal, the highest court of justice in social security matters, which rule that the application of the CRC is possible *when* a Dutch child is concerned.⁸

The Dutch NGO Coalition for Children's Rights is of the opinion that the Dutch courts' interpretation of the scope of the CRC is at loggerheads with the guidelines issued by the UN Committee on the Rights of the Child, which repeatedly emphasise that all rights set forth in the Convention are applicable to all children within the Netherlands' jurisdiction, and consequently also to children without a residence permit and to children whose parents are not cooperating in their return to their country of origin.⁹

The interests of the child

Article 3, paragraph 1

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the interest of the child shall be a primary consideration.

The Netherlands courts give insufficient weight to the interests of the alien child in proceedings of relevance to them. Usually, invoking Article 3 of the CRC is simply dismissed with the standard formulation: "As it [the Administrative Law Division of the Council of State] has considered previously¹⁰, this Article of the Convention [Article 3] does not, in view of its formulation, lay down a standard suitable for direct application by the court since it is insufficiently specific for such an application and consequently needs further detailing in national legislation and regulations."¹¹ The Government is of the opinion that the policy does justice to Article 3 of the CRC. This gives cause to the following reasoning: "Primary consideration to the interests of the child was already given on the formulation of the policy", and consequently a

separate test against the interests of the child is superfluous.¹²

However, the interests of the child are applied, for example, in family law, health law, the child protection regulations and criminal law. Consequently the interests of the child are worked out in further regulations in numerous fields of law.

This could also be achieved in aliens law, for example using the model developed Kalverboer and Zijlstra¹³. This model can be used to map the interests of the child in aliens law in fourteen areas of life, in the past, present and future, and at the level of the child, the child's family and society. The model maps the conditions attached to the development of the child.

The right to development

Article 6, paragraph 2

States Parties shall ensure to the maximum extent possible the survival and development of the child.

Several thousand children have been living in the Netherlands without a residence permit for more than five years. A legal action is currently being taken against the state in which it is argued that the Government's – threat of – deportation of these children damages their right to the best possible development (Article 6, paragraph 2, of the CRC). It is argued that a child's roots in Dutch society must be taken into consideration when weighing the interests involved in conferring a residential permit. Since these children have undergone development on Dutch soil, in the Dutch language and culture and Dutch standards the Government's intention to deport them causes a break in the children's development. The lengthy residence procedures – that sometimes actually result in illness – and the following lengthy period of uncertainty about deportation also results in the Netherlands' loss of a great deal of talent. Young people who begin a study with a great enthusiasm find themselves confronted with years of uncertainty and ultimately lose track. The Dutch NGO Coalition for Children's Rights regards this impediment – and, on occasion, damage – to the development of the child as a violation of Article 6, paragraph 2, of the CRC. A very special concern related to this right is described under article 22: the problems of children of a parent with a 1F-status under the Refugee Treaty. They are in the Netherlands for a average of ten years and their development is already damaged by the long period of anxiety and uncertainty.

On 9 June 2008 the Justice Minister and State Secretary submitted a letter to the Lower House of Parliament in which they suggest that children and family members of individuals who come under Article 1F and who have resided in the Netherlands for a period of at least ten years of uninterrupted stay will be granted a residence permit if they have instigated any residence proceedings. Their own attitude in the departure process will be taken into account. The Dutch Coalition for Children's Rights finds a period of ten years to long for children. A period of five years is preferable because research shows that children are damaged when they have to leave the country after a period of five years. The position of younger brothers and sisters is not mentioned in the letter. These children should be taken along in the solution which has been found for the oldest child. When this is not the case, the child with the residence permit can be separated of his brothers and sisters, which would violate the rights of the child. The suggestions of the Justice Minister and State Secretary will be discussed by the Lower House of Parliament in September 2008.

Children with parents

A similar problem confronts the children of parents who, because of contra-indications, do not come into consideration for the non-recurrent settlement of the old Aliens Act (general amnesty) legacy regulation, what is referred to as the 'General Amnesty'. This regulation is applicable to aliens who applied for asylum before 1 April 2001 and for whom contra-indications such as criminal past are not an issue. The Government does not take individual account of the interests of the children of these parents in decisions as to whether the relevant family should be excluded from the amnesty. When children come into consideration for the amnesty then their parent should be able to apply for residence with the child, since the child not only has the right to continuous development but also has the right to family life.

Unaccompanied minor aliens

The number of unaccompanied minor aliens that applied for asylum declined sharply from 6,681

in 2000 to 585 in 2007. Many unaccompanied minor aliens receive neither an asylum permit nor an unaccompanied minor alien permit (Aliens Order 3.5, under q) on the grounds that they have failed to cooperate adequately in the investigation of possibilities for reception in their country of origin or because there is adequate reception in their country of origin. The Netherlands Government funds orphanages in Angola and the Congo so that it can be argued during the admissions procedure in the Netherlands that reception in the country of origin is available. In almost all cases in which it is determined that adequate reception is available no endeavours are made to bring the unaccompanied minor alien to the reception centre or to come into contact with the social-services network in the country of origin. The Dutch NGO Coalition for Children's Rights advocates that, with a view to their development, unaccompanied minor aliens should receive a definitive answer as to the possibility of residence in the Netherlands as soon as possible – i.e. the child should, when such is in his or her interest and protection pursuant to the Refugee Convention is unnecessary, be returned to a safe and supportive social network in the child's country or origin, and when this is not possible then the unaccompanied minor alien should receive a residence permit.¹⁴ Within this context particular attention needs to be devoted to unaccompanied minor aliens who have lived in a Dutch foster family for many years and have developed ties with their foster parents. The right of children without a family to continuity in their upbringing pursuant to Article 20, paragraph 3, of the CRC is not observed. The new Minister has announced that a reassessment of the policy concerning unaccompanied minor aliens is planned for 2007.

The right to be heard

Article 12 of the CRC: 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Unaccompanied minor aliens

The accelerated 48-hour procedure does not provide for the specific expertise needed to hear or represent minors. No pedagogue or psychologist is present to supervise the hearing of the child in a manner appropriate for their age. It is not standard practice to hear unaccompanied minor aliens on their (asylum) procedure in the presence of a legal representative. When unaccompanied minor aliens are heard insufficient account is taken of their special circumstances, namely their origins in a different culture and, on occasion, a different understanding of concepts such as time, place, and even of formal issues such as date of birth and name. Some of these children have been witnesses or victims of traumatic experiences in their country of origin or during their flight. Recognizing these requires specific schooling and expertise on the part of child and youth psychologists and/or child and youth psychiatrists.

The rapid completion of the accelerated 48-hour procedure is at loggerheads with articles 3, 12 and 22 of the CRC. The Dutch NGO Coalition for Children's Rights is of the opinion that a number of interpreters need to be trained to interview children. In addition to their ability to interpret a foreign language in terms of the national language they also need to be trained to interpret the language and world of children in terms of the language and world of adults. For this reason it is wrong to hear children and young people during the accelerated 48-hours procedure; they have the right to make better preparations for their hearing. In addition, interviewers need to be trained in recognizing reasons for fleeing which are specific to children.

Civil rights and freedoms

Right to a name and nationality

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States

Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

On the first of January 2007 there were about 1463 stateless children in the Netherlands. An unknown number of children are registered with an 'unknown' nationality, in most cases the nationality is then disputed because the child is not able to prove he is stateless or has no documents to prove his nationality. A member of the Dutch parliament has asked the State Secretary of Justice to take measures in order to reduce the number of children without a nationality. The Deputy Minister of Justice, in charge of aliens affairs replied this would not be necessary¹⁵. Two main groups of children are overlooked by the Deputy Minister. The first group consists of stateless children without a residence permit: no rules are available to help them to acquire a nationality. The second group consists of children whose nationality is disputed. For example refugees who are granted a refugee status and have children that are born in the Netherlands, may have no possibilities to register their child in their home country. Then the child has neither his parent's nationality, nor the Dutch nationality. The child will be registered with an unknown nationality and no solution is available at the moment. In another example a Moroccan mother is not able to give the child the Moroccan nationality without the permission of the father. If the father is not 'available' the child will not get a nationality and the child will be registered 'with an unknown nationality', in stead of being stateless.

Deprivation of liberty as a means of last resort

Article 37, under b

no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

Although the number of children and their parents placed in detention for the purpose of deportation has declined sharply, it is still possible to lock up children in a cell on the grounds of their residency status. The Health Care Inspectorate has raised serious objections against the medical conditions and care in the relevant detention centres.¹⁶ The Dutch NGO Coalition for Children's Rights is of the opinion that the facilities for rejected asylum seekers where they can prepare for their departure – the shelter locations – offer an alternative to detention for the purpose of deportation such that pursuant to Article 37b of the CRC it is unlawful to detain children for the purpose of deportation. These shelter locations are open, and the children leave the centres to attend regular schools. Detention for the purpose of deportation takes place in closed prisons. In furtherance of a report on the return policy in the Netherlands drawn up by a Rapporteur from the Council of Europe¹⁷ the Parliamentary Assembly of this organization emphatically called on the Netherlands to avoid the detention of children in all circumstances.¹⁸ The UN Committee on the Rights of the Child has also expressed its concern about the fact that children are placed in detention for the purpose of deportation.¹⁹

The Dutch authorities state an alternative for the detention of children when the children live with both parents whereby the possibility could be offered of detaining one parent whilst the other parent remains in a shelter (departure centre, i.d. vertrekcentrum) with the child. Children could also be received in a foster family whilst the parents are detained.²⁰ Both measures result in the separation of the parents and children that is not in the interests of the child and consequently constitutes a violation of Article 9, paragraph 1, of the CRC. Moreover parents should never be confronted with an impossible choice of this nature.

The Deputy Minister of Justice announced in a letter to the Parliament of 29 January 2008 a policy change for families who are to be detained upon their departure. A maximum of 14 days of pre-departure detention is introduced for families with children. This is a major improvement but worries still exist about the necessity of this detention. More over, for the unaccompanied minors no improvements are made at all. They are detained at a wing for youth of a prison for adults. The Dutch NGO Coalition for Children's Rights views these differences in treatment of children with and without parents as a violation of article 2 of the CRC.

Family life and alternative care

The right to family life

Article 9, paragraph 1

States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

Article 10, paragraph 1

In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane, and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

Children with parents

As a result of the stringent family reunification and forming regulations children in the Netherlands are often under threat of separation from their parents legally in the country when the children have arrived in the Netherlands without the necessary *Machtiging tot Voorlopig Verblijf* ('Authorisation for temporary stay', MVV) or when the children are legally in the country but their parents are not. The Dutch NGO Coalition for Children's Rights is extremely concerned about these violations of the basic right of the child to live with its parents. A parent wishing to have his or her son or daughter come over to the Netherlands must meet a number of requirements; the parent must earn at least the minimum wage and must have a contract of employment for a minimum duration of one year. The amount of the associated charges for the application also forms a barrier which is becoming insurmountable. Once the family is together in the Netherlands without a MVV it is virtually impossible to come into consideration for a residence permit.

Also children who lost contact with their parents due to war circumstances in their home countries are not allowed to enter the country to reunify with their parents as quick as possible. In 2007 and 2008, there was a NGO campaign for nine Tibetan children in India who were refused permission to join their parents in the Netherlands, even though their parents got political asylum.²¹

Another measure which hinders the right to family life is the Integration Abroad Act (Wet inburgering in het buitenland 2005). Minors from above sixteen have to pass an integration test in their home countries before they are allowed to reunite with their parents in the Netherlands.²²

The role of the parents

Article 5

States Parties shall respect the responsibilities, rights and duties of parents (...) in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Children with parents

The traditional division of the roles between parents and children comes under pressure during the asylum procedure and in the period that families do not have a residency status. Parentification – the reversal of the roles of parents and children – is frequent. The Dutch authorities make it even more difficult for asylum-seeker parents to assume their role as a guide, supervisor and protector. The many years' stay in the small rooms at asylum seekers centres – which offer little privacy and where stress can rise to high levels – is anything but beneficial to parents' parenting duties. The frequent moves to yet another reception centre damage the children's normal bonds with others of a similar age, and when this affects children receiving aid under a care programme this not only interrupts the continuity of the treatment but also damages their confidence in the aid. However, and worst of all, children in reception centres are confronted with their parents' inability to protect them from the deprivation of liberty, deportation,

and intimidation. Families can be picked up in the night by – on occasion, masked – police officers with guns who bring them to a prison for the purposes of deportation. In addition to the fact that this violates the right of the child to a safe and protective environment (see also under Article 37), the Dutch NGO Coalition for Children's Rights also requests attention for the serious consequences this action has for the division of the social roles between parents and children and the obstacle it creates in the parents' ability to carry out their parenting duties in an appropriate manner.²³

The most serious infringements of parental authority are probably placing children without a residence permit under supervision and issuing care orders. The parents are then no longer able to provide the basic necessities of life (see Article 27 of the CRC) because the authorities have barred their access to basic provisions. The Dutch NGO Coalition for Children's Rights is aware of a number of cases of this nature.

Basic health care and welfare

Article 24, paragraph 1

States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

Children without a residence permit

Although all children in the Netherlands have a formal right to 'the necessary care' it is far from always clear that children without a residence permit actually receive this care. On occasion aliens without documents are sent away from hospital reception desks before a doctor has been able to determine whether medical care is necessary. It is suspected that parents delay calling on medical care because they are afraid that this will lead to the discovery that they are illegal aliens. Article 10, paragraph 2, of the Dutch Aliens Act provides for the entitlement to the necessary medical care irrespective of residency status²⁴. This relates to a 'can provision', thereby implying that the Minister can exercise discretion in applying the policy. This should not be possible for the necessary medical care. Moreover, in practice this provision is actually used as an argument for the termination of the reception facilities; the persons involved then receive medical care, but are not provided accommodation or food. The poor accessibility of mental care to children without a residence permit gives cause for concern, since in relative terms children without a residence permit are more likely to suffer from mental health problems.²⁵

One of the main reasons for the inaccessibility is the absence of an emergency fund that can be used to pay for this second-line care when those requiring help are unable to pay themselves. The *Koppelingsfond* (uninsured illegal aliens fund) is available for first-line care – GP, pharmacy, midwife, dentist – to reimburse the cost of the health care. However, this fund is also subject to restrictions that can have serious consequences for children's health; for example, the fund reimburses solely dental care for the "retention of the ability to chew", and is not available for a child requiring glasses. Most but not all of these worries will be removed with a new law on the costs of medical treatment for persons who do not legally stay in the Netherlands²⁶. For the direct accessible care, this new law means regression as health care workers can only claim 80 percent of the costs. For the indirect accessible care, like the hospitals and for example the psychological treatment this means an improvement because the health care workers are able to claim 100 percent of the costs under certain conditions. Worries still exist about the accessibility of these forms of health care for irregular migrant children because only a few hospitals and treatment centres will have contracts with these claiming possibilities.

The Health Care Insurance Act came into force in the Netherlands on 1 January 2006. The new, mandatory basic insurance is applicable to all Dutch nationals and to everyone with a residence permit (legal) domiciled in the Netherlands. Children below the age of eighteen receive free insurance. This provision should also be applicable to children without a residence permit; *all* children in the Netherlands should have access to basic health care.

The right to an adequate standard of living

Article 27, paragraph 1

States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Article 27, paragraph 3

States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

Children without a residence permit

Children without a residence permit are excluded from the right to assistance. In a ruling from the Central Court of Appeal of 24 January 2006 the Court does recognize a right for assistance for children of parents who are legally domiciled in the Netherlands but have not yet been admitted, but not for the children of parents without an entitlement to temporary residence. It should be noted that the Central Court of Appeal denies the direct effect of Article 27 of the CRC.²⁷ The Dutch NGO Coalition for Children's Rights is extremely concerned about the fact that children in the Netherlands without an entitlement to temporary residence are excluded from the most basic provisions such as housing, but also from money for clothing and food. In so doing children end up below the subsistence level – and often on the street. The Dutch NGO Coalition for Children's Rights is extremely concerned about these violations of Article 27 of the CRC, and finds it incomprehensible that the direct effect of Article 27 of the CRC is denied, since the 'nutrition, clothing and housing' requirements (Article 27, paragraph 3 of the CRC) are highly specific. These relate to basic provisions that must be available for all children. It is also important that the Government recognizes that Article 27 of the CRC is inseparably linked to the basic principles of the CRC laid down in articles 2, 3 and 6 of the CRC.

In addition to violating the right to basic provisions, this can also violate the right of the child to live with its parents. If there is no right to reception and the parents cannot offer the child a roof or other basic necessities then the child can be placed under supervision and in care to protect the child from a further impediment to his or her development. Consequently whilst a child protection order is issued for solely for other children solely when their parents mistreat or neglect them, children without a residence permit can be separated from their parents even when they have a good and healthy relationship with their parents, which is also an infringement of article 9 of the CRC.²⁸

Education, leisure and recreation, and cultural activities

The right to education

Article 28, paragraph 1, under a and b

States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- a) make primary education compulsory and available free to all;
- b) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

Children without a residence permit

It appears to be increasingly difficult to achieve the right to education for minors in the Netherlands who do not have a residence permit. Schools are confronted with a lot of bureaucratic obstacles, especially if the child is not able to prove it's identify. As a result some schools are unwilling to accept children without a residence permit. The Dutch NGO Coalition for Children's Rights advocates full funding for schools on the basis of all children attending the school, irrespective of their residency status, since only then can the authorities guarantee the right to education. In addition, it would be preferable to issue all children of age fourteen and above one standard document for use in identifying themselves; the increasing pressure on the duty to furnish proof of identity is resulting in children without a document of this nature experiencing continual exclusion. Moreover pupils without proof of identity are often excluded from cultural exchange projects at school.

A second problem relates to courses in which minors are required to go on traineeships. Since employees taking on employees without a residence permit can be confronted with stiff penalties they are not prepared to accept trainees without a valid residence permit, and for this reason some schools also refuse to accept these pupils. The Dutch NGO Coalition for Children's Rights is of the opinion that the authorities must warrant that traineeships count as part of the right of the child to education, since this will then enable the pupil to go on traineeships. A second option could be to place schools under the obligation to give alternative assignments to children who cannot go on traineeships because of their residency status.²⁹

Special protection for asylum seekers and refugees

Article 22, paragraph 1

States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment or applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

Unaccompanied minor aliens

The new unaccompanied minor alien policy implemented in 2001 is referred to as a success since many fewer unaccompanied minors now apply for asylum in the Netherlands (2001: 5,950 applications, 2007: 585). However, the fact that the majority of these young people leave for an unknown destination gives cause for concern; in the period from 2000 to 2005 between 79 and 91 % of the departing unaccompanied minor aliens left for an unknown destination. Although the absolute number of minors leaving for an unknown destination has decreased the percentage of unaccompanied minor aliens leaving for an unknown destination is still very high, namely 84.3%.³⁰ The figures about disappearances during the procedures are lower than upon departure or deportation. In 2007 122 unaccompanied minors left with unknown destination a reception centre.³¹

Protection measures have since been taken for a limited group, such as the earlier assignment of a guardian and placing the unaccompanied minor in high security reception centres (closed). The Dutch NGO Coalition for Children's Rights is extremely concerned about the large number of unaccompanied minor aliens who disappear and will find themselves in extremely vulnerable positions in which they constitute an easy prey for persons wishing to exploit and/or abuse them. Additional protection measures should be taken for all unaccompanied minor asylum seekers and other aliens entering the country until such time as has been determined that the individual minors are not in need of special care. More comprehensive hearings can begin only once the relevant minor has been received in this safe environment and composed him or herself.

The Dutch NGO Coalition for Children's Rights perceives an important role for the guardians in preventing disappearances later in the procedure. The guidance should focus on the development of trust so that the guardian and the minor can work together in seeking a sustainable solution. This guidance may not be based on preparing unaccompanied minor aliens for return to their country of origin from the moment that they arrive at the reception centre, since the Dutch NGO Coalition for Children's Rights is of the opinion that the distrust that can be caused by this approach could play an important role in those disappearances. The guardians' legal knowledge needs to be improved so as to prevent irremediable errors in the residence procedure; in addition, knowledge of trafficking and the legal consequences for residence is indispensable. The guardian needs, more than is currently the case, to carry out a specific individual analysis in the sense of Article 3 of the CRC to assess the best long-term option, i.e. return or taking up residence.³² This is in line with the recommendations in General Comment No. 6 of the Committee for the Rights of the Child. The Netherlands' age investigations of unaccompanied minor aliens have an exclusively medical basis, i.e. the interpretation of X-ray photos of the bones in the wrist and/or the collarbone. In line with the recommendations of the UN Committee on the Rights of the Child³³ the Dutch NGO Coalition for Children's Rights advocates a more holistic approach which also extends to the psychological development of the child.

Children with parents

In the Netherlands live about 800 persons (with about 300 family members) who have been accused of having committed crimes as mentioned in article 1F of the Geneva Refugee Convention. The children of these fathers are not able to obtain a residence permit. As a consequence they are also excluded from the non-recurrent settlement of the old Aliens Act (general amnesty) legacy regulation. They organised themselves in a committee called Foute Kinderen Bestaan Niet ('wrong children do not exist') because they do not accept to be punished for something their fathers might have done. Most of the children in the committee are from Afghanistan and are about ten years in the Netherlands. In most cases the families could and can not be expelled due to a risk to be subjected to torture, or to inhuman or degrading treatment or punishment (article 3 of the European Convention on Human Rights). The Dutch NGO Coalition for Children's Rights considers the exclusion of these children from the general amnesty as a violation of article 2 of the CRC and Article 6 CRC. More over a full assessment of the problems these children may face when they would return to the home countries of the parents because of their family ties with the '1F-parent' is missed in the asylum procedures. If this would contribute to a risk of persecution or inhuman treatment as meant in article 3 ECHR the children should get a residence permit in the Netherlands based on respectively Article 29a and 29b Aliens Act. Relatives of a person to whom Article 1F is applied (spouse and children) are considered in Dutch policy as a threat to public order and for that reason are not entitled to a residence permit unless they themselves can be recognized as refugees under the Geneva Convention. The Dutch NGO Coalition for Children's Rights deems the stigma of being a threat to public order an outrage.

On 9 June 2008 the Minister and State Secretary of Justice submitted a letter to the Lower House of Parliament in which they suggest that children and family members of individuals who come under Article 1F and who have resided in the Netherlands for a period of at least ten years of uninterrupted stay will be granted a residence permit if they have instigated any residence proceedings. Their own attitude in the departure process will be taken into account. The Dutch Coalition for Children's Rights finds a period of ten years too long for children. A period of five years is preferable. The suggestions of the Justice Minister and State Secretary will be discussed by the Lower House of Parliament in September 2008.

4.4 Recommendations to the Dutch Government

Article 2

4.1 Do not exclude any children from the effect of the CRC, whereby 'any children' also includes children without a residence permit. Recognize the direct effect of Article 2 of the CRC.

Article 3, paragraph 1

4.1 Arrange for an explicitly more aware, recognizable and individual weighing of the interests of the child in all alien law procedures and proceedings in which children are involved.

Article 6, paragraph 2

4.3 When dealing with unaccompanied minor aliens restrict the period of uncertainty about the residence permit and the interval in which the actual return is an issue. Make contact with social networks in the country of origin when no protection needs to be provided pursuant to the Refugee Convention, and accept a permanent residence permit when adequate reception in the country of origin is impossible.

Article 6, paragraph 2

4.4 Recognize that children can become rooted in Dutch society, and that it is not subsequently possible to deport them without causing damage. Issue a residence permit to children who have developed roots in the Netherlands.

Article 8

4.5 Consider the possibility to give the Dutch nationality to every child who has not been able to acquire another nationality in three years.

Article 9 and Article 10

4.6 Give the children of parents with a permanent residence permit for the Netherlands an

entitlement to residence without conditions.

Article 12

4.7 Do not hear children in application centres, even children who are with their parents. Train interviewers in the recognition of reasons for fleeing which are specific to children and in areas of development and child psychology. In the event of suspicions of traumatic experiences have an expert draw up a report and take this expert report into account in the decision-making.

Article 22 of the CRC

4.8 Arrange the guardianship of all unaccompanied minor aliens within 24 hours and give all unaccompanied minor aliens special protection in a closed reception centre until such time as it transpires that this special protection is not necessary. An appropriately documented weighing of interests must be made in all decisions relating to unaccompanied minor aliens. The age investigation must be of a holistic nature. Make sure that the guardians also receive sufficient legal training.

Article 22

4.9 Ensure that children with a parent who has an 1F status of the Refugee Convention, do have their own asylum procedures and are not punished for the fact that their father had been accused of these activities.

Article 24

4.10 Guarantee equal accessibility to the health care services to all children in the Netherlands, irrespective of their residency status. Ensure that all children in the Netherlands have equal access to health care.

Article 27

4.1 1 Give the parents of children without residence permits the opportunity to provide their children an adequate standard of living. Do not turn out any children onto the street; recognize the direct effect of article 27.

4.12 Ensure the right to housing for all children and their parents.

Article 28

4.13 Give schools regular funding for children without a residence permit, and render traineeships feasible by specifying these as education rather than as work.

Article 37, under b,

4.14 Do not place any children in detention for the purpose of deportation; allow minors to stay with their parents at shelter locations. Do not detain unaccompanied minor aliens; allow them to stay in communal accommodation. Detaining children on the grounds of their residency status should be prohibited by law.

5 Children in poverty

Introduction

"Sometimes I think: Well, it's better to have food than a Play Station, cause you can't eat a Play Station." (boy, 11)

This Section reviews poor children in the rich Netherlands. Poverty is a relative concept, since it is linked to the general level of prosperity of a given society and the associated level of welfare. Anyone in today's Western society without a refrigerator, telephone or holidays for financial reasons can be qualified as poor. It is important to realize that poverty is not merely synonymous with an income below the minimum level; severe and long-term poverty results in isolation and exclusion that extend beyond solely the economic consequences. Children do not choose their level of prosperity, and the side-effect of life in poverty – social exclusion – is particularly felt by children. Various national and international studies of the Netherlands reveal that poverty not only exerts an influence on children's development in the fields of health, education, psychosocial well-being, participation in culture, sport and recreational activities, but also exerts an influence on their future expectations and chances in life. Children have an above average chance of growing up in continual poverty. Poor children are over-represented in the child protection sector and under-represented in organized sport, and in relative terms they commit more offences and are more likely to drop out of school.

The reality is that a lot of children in the Netherlands live in poverty. In 2005 at least one out of eleven children below the age of eighteen (9,1%) in the Netherlands live in a poor family, equivalent to 310,000 children living on or below the poverty line (Poverty Monitor, 2007). Onethird of the children are facing a long term poverty of three years or longer. However, there are different interpretations of the concept of poverty and, consequently, different figures. Moreover, some groups – including 'illegal' children – are not included in these figures from the Central Bureau of Statistics and the Social and Cultural Planning Board. Consequently the actual number of children living in poverty is considerably higher. Various European comparative studies have revealed that the Netherlands has a relatively high level of child poverty in comparison with the other countries (UNICEF Innocenti Research Centre, 2005). Children in one-parent families (38% of the total number of poor families, CBS, 2006), large families³⁴, migrant families, illegal families and families in poor neighbourhoods have a higher probability of growing up in poverty than others. 16.4% of all children grow up in a deprived neighbourhood (Kids Count, 2008).

5.1 Recommendations from the UN Committee on the Rights of the Child, 2004

Recommendation 11 from the UN Committee on the Rights of the Child, 2004

Reservations (Article 51 of the CRC)

The Netherlands has made three reservations (relating to articles 26, 37 and 40) and a number of interpretative statements relating to the UN Convention on the Rights of the Child.

Recommendation 23 from the UN Committee on the Rights of the Child

Specification of the budget allocated to youth issues (Article 4 of the CRC)

The Netherlands should pay particular attention to the full implementation of Article 2 of the Convention by making clear which part of the total government budget is allocated to the implementation of the economic, social and cultural rights of children, in particular, for those children belonging to the economically disadvantaged groups.

Recommendation 40 from the UN Committee on the Rights of the Child

Youth care: waiting lists and funding (Article 18 of the CRC)

The Dutch Government should carry out an evaluation of the services available to parents to assist them in their child-rearing responsibilities to determine the cause of waiting lists in the Netherlands and assess the quality of the services provided. The Government should increase the funding of childcare facilities and services and support parental education programmes. The Government must also ensure that all children of working parents have the right to benefit from

these services and facilities.

Recommendation 52 from the UN Committee on the Rights of the Child

Dealing with truancy and human rights education (Article 28 of the CRC)

The Dutch Government should expedite efforts to address non-attendance and the dropping out of school. The Dutch Government should also ensure that affordable and quality early education is available for all children.

The Dutch Government must also ensure that human rights education is included in the school curriculum.

Recommendation 54 from the UN Committee on the Rights of the Child

Refugee and asylum-seeking children (Article 22 of the CRC)

The Dutch Government should review the Aliens Act of 2001 and its application to ensure full conformity with international standards.

Follow-up given to the recommendations

Recommendation 11

The Government has not withdrawn the Dutch reservation to Article 26 of the CRC.

Recommendation 23

There is no clear overview of government expenditure on children in general and, consequently, no overview for children in poverty in particular. This is due to the division of policy fields relating to children between the various ministries and between national and local administrative layers.

Recommendation 40

No recommendations relating to Article 27 of the CRC were made during the discussion of the report. However, concerns were expressed within the scope of Article 18 of the CRC about the spending cuts in the budgets for facilities for children and agencies assisting parents in child-rearing (UN Document CRC/C/15/add.227 paragraphs 39, 40). Unfortunately, in practice disadvantaged children are still unable to benefit from all the facilities. There is a need for more information and for more transparency, and for less bureaucracy and fewer departments working at cross purposes with each other. The Netherlands does not have an appropriate insight into the availability of parenting support; the reach and effect are not clear.

Recommendation 52

The authorities pay more attention to combating dropping out from school truancy. However, some children are still unable to gain optimum benefit from education (more comprehensive information is given later in this Section and in the Section on education)

Recommendation 54

Pursuant to a ruling from the courts children legally residing in the Netherlands now have the right to welfare assistance. However, 'illegal' children are still excluded from basic facilities such as gas, water and lighting and housing. (See section on aliens policy)

5.2 Trend

Remaining poverty

A lot of children in poor families are growing up on or below the poverty line. Er zijn wel schommelingen, waardoor het aantal het ene jaar iets hoger is dan het volgende, maar nog altijd leven er veel kinderen in Nederland in armoede.

More attention from the national and local authorities to combating poverty

The agendas of the local and national authorities increasingly reflect an awareness that investing in the future of children and young people in general, and in combating poverty in particular, is of importance to the future. The authorities' spearheads in combating exclusion are (NAP, 2006):

- intervention in problem families
- participation of children and young people

- combating learning arrears and dropouts
- combating youth unemployment.

The current Ministry of Youth and Family Affairs has developed plans to combat social exclusion, for example the introduction of a personal budget for children intended to provide parents an income-dependent contribution towards the costs of children (letter from Mr Rouvoet to Parliament, 2007) and the deployment of Youth and Family Centres. The Senate of the States General recently (20 March 2007) approved the *Wet Voorzieningen Arbeid en Zorg Alleenstaande Ouders* ('Work and Care (Provisions) Single Parents Act') which offers single parents with children an allowance when they work part-time. This Act will, subsequent to experimentation in the country, come into force on 1 January 2009. A new *Kinderopvangwet* ('Childcare Act') came into force on 1 January 2005, and single parents now also fall under the new Act. Single parents engaged in a reintegration programme are entitled to a benefit from the local authorities to cover the cost of childcare. However, parents are unaware of this option. Funds are being made available to help people who now call on food banks to find their way to regular agencies such as the social services.

The Dutch NGO Coalition for Children's Rights highly welcomes the initiative of one of the government parties (PVDA, 2007) to come with an action plan to decrease the amount of children in poverty with one third by 2011. And to decrease the amount of children by half that is no member of a sports organisation, music school etc.

Delegation of the responsibility for combating poverty to the municipalities

On the introduction of the Work and Social Assistance Act on 1 January 2004 to replace the National Assistance Act the municipalities were delegated more responsibility in combating poverty. The Work and Social Assistance Act Monitor of 2006 reveals that the Work and Social Assistance Act no longer offers income security, since the benefit is linked to the efforts made to integrate in the labour market – something which is very difficult for people who have lived in poverty for a long period of time. In so doing the safety-net role has been lost. In practice this means that the families are confronted with long waiting times before they receive benefits (the *FNV Lokale Monitor Werk en Inkomen 2006* reveals that 10% need to wait longer than 8 weeks). The statutory regulation for municipalities (the Social Support Act, WMO), which came into force on 1 January 2007, enables municipalities to make a link between measures focused on combating poverty and participation in society. However, children are not specified as a specific target group in this statutory regulation for municipalities.

Restricted definition of poverty

The Dutch Government continues to make use of a restricted definition of poverty. As from 1994 the EU specifies an explicit relationship between poverty and exclusion; the Netherlands seems to notice this relationship more and more. There are first steps to conduct a research to social exclusion of children. Nevertheless, the restricted definition of poverty constitutes the basis of the Ministry of Social Affairs and Employments' poverty policy since 2004 (modernized welfare act: the Work and Social Assistance Act). An insufficient income, no or poor access to the labour market and limited schooling are regarded as risks for poverty. Moreover, in the Government's perception poverty is the result of 'personal characteristics'.

5.3 The Dutch NGO Coalition for Children's Rights' concerns

The concerns of the Dutch NGO Coalition for Children's Rights (Dutch NGO Coalition for Children's Rights) about the violation of the rights of the child relating to children and poverty have classified by theme in accordance with the layout the Committee requested in its instructions for the report.

The Dutch NGO Coalition for Children's Rights finds it unacceptable that a rich country such as the Netherlands has so many poor children. The Dutch NGO Coalition for Children's Rights is extremely concerned about this group of children who, as a result of child poverty, have inadequate access to facilities such as education, health care, housing, pleasure, development, and a future. This is in part due to the fact that their parents cannot access these facilities. Child poverty will need to be assigned an even higher place on the Dutch political agenda, be recognized, and be dealt with – inclusive of the consequences of social exclusion for children. The Netherlands is overly out of step with other countries due to the reservation it made to

Article 26 of the CRC.

General principles

The right of poor children to development

"If we want something mom usually says 'it's not possible'. If your shoes are worn out and there's no money, you wait. Food always comes first with our mom." (girl, 15)

Article 6, paragraph 2

States Parties shall ensure to the maximum extent possible the survival and development of the child.

The Dutch NGO Coalition for Children's Rights is concerned that so many children live in poverty. Poverty exerts an influence on children's opportunities for development and future prospects. Studies have revealed that severe and long-term poverty results in isolation and exclusion that extend beyond solely the economic consequences. Poverty has harrowing effects on children. Poor families often lack clothing (70%), fresh vegetables and fruit (25%) and specific medicines, and have poor or no housing. Children experience feelings of exclusion much more intensely because they cannot take part in the customary social life of children of similar age. Poor children cannot participate as much in social activities such as clubs, birthdays (50%) or a day trip, and they cannot go on holiday. Other problems include stress in the family, children who become involved in their parents' financial problems, the below-average educational performance of poor children, and psychosocial problems. In addition, poor children often exhibit delinquent behaviour (Snel, Van der Hoek & Chessa, 2001).

From other research (SCP, Kinderen van Nederland, Zeijl e.a., 2005) it is known that children in one-parent families, families that live under the poverty line, non-Western parents and parents with lower education (these groups can be interlinked) are relatively often confronted with poverty problems.

This 'social poverty' or 'exclusion' results in these children feeling powerless, ashamed or jealous – or in other words, the children cannot develop themselves to a sufficient extent. In the Dutch NGO Coalition for Children's Rights's opinion this is in conflict with Article 6 of the CRC. The Dutch NGO Coalition for Children's Rights is of the opinion that the authorities and society (civil-society organizations, schools and churches) should work together in combating poverty.

The right of poor children to participation

Article 12 of the CRC

States Parties shall assure the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child.

Children were not consulted during the preparation of the *Nationaal Actieplan tegen armoede en ter bevordering van participatie* ('National Action Plan to combat poverty and promote participation'), 2006. Although the participation of children living in poverty is stated as a specific point for attention, the detailing of the plan contains solely examples of a number of good practises initiated by the government and does not refer to the CRC and the right of the child to participate.

There is still no Children's ombudsman who can offer children (living in poverty) legal assistance and serve as a mouthpiece on behalf of these children in communicating their wishes and needs to the authorities. A number of national and international studies have been carried out into the perceptions of children who live in poverty. These reveal that (even young) children are very results-minded.

Civil rights and freedoms

Measures to combat violence, neglect and abuse of poor children

Article 19 of the CRC:

Children shall be protected from all forms physical, mental and sexual abuse in and outside their family. The State is responsible for prevention and treatment.

There is an evident relationship between combating poverty and combating child abuse (see also the Section on child abuse). The recent study of child abuse in the Netherlands (Van IJzendoorn/Pinzie, 2007) reveals that unemployed parents and parents with little or no schooling are relatively more likely to commit child abuse.

Basic health care and welfare

The right of poor children to health care

Article 24 of the CRC

States Parties recognize the right of all children to health and facilities for treatment

Poor children run increased health risks because they eat insufficient or unhealthy food, cannot practice sports, and cannot pay for medical or dental care. Figures published by the Central Bureau of Statistics (2007) indicate that 40,000 children are uninsured. Poor children exhibit more frequent problems in their socio-emotional development.

The right of poor children to social security

Article 26 of the CRC

Every child has the right to benefit from social security provisions.

The Netherlands has made a reservation to this Article in view of concerns that Article 26 of the CRC could result in a direct claim for social security benefits via the national court –and this whilst the group that drew up the text of this Article, which included the Netherlands, wished to ensure that children could benefit from the social security safety net offered by the State. The Dutch NGO Coalition for Children's Rights is of the opinion that this reservation is at variance with the Dutch social-security policy and system, and with its high level of provisions.

The *Koppelingswet* ('Benefit Entitlement (Residence Status) Act') of 1998 linked the right to State assistance to the possession of a residence permit, as a result of which 'illegal' children in the Netherlands are not entitled to social security benefits. Although the ruling by the court as stated in the Government report found that 'illegal' children are also entitled to social security benefits, in practice these children still all too often fall between two stools, in part because their parents are unaware of this entitlement and in part because this right is still denied to them (see the Section on aliens policy). This is in conflict with Article 26 and with the non-discrimination principle laid down in Article 2 of the CRC. The CRC is applicable to 'illegal' children, and consequently the Netherlands is under the obligation to make social security provisions available to these children.

In addition to child benefits, families are also offered a range of other provisions including child credit, single parent credit, and childcare credit. However, people with low incomes cannot make use of these credits because they are deducted from the taxpayer's income tax; since they pay virtually no income tax they cannot benefit from these credits.

Many municipalities offer a discount for activities via special income support. However, the opportunities vary between municipalities, and many people entitled to this support are not aware of the scheme.

Families at or below the minimum income level often have debts that need to be repaid from this income or benefits, as a result of which they need to make use of debt restructuring or debt assistance schemes. This ultimately results in a low disposable income.

The Dutch social security benefit level for families with children is relatively low (in comparison with countries such as Germany).

The right of poor children to an adequate standard of living

Article 27, paragraph 1:

States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Article 27, paragraph 3:

States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

The Dutch Government is of the opinion (see the Government report, 2007)³⁵ that people earning a minimum income do not live in poverty. However, the Government does not take account of the aforementioned problems. The Dutch NGO Coalition for Children's Rights's standpoint is that it is important to quantify poverty in its entirety. In combating poverty the Government should also quantify social exclusion, whereby it should take all groups into account in this quantification (including 'illegal' children).

Relatively more poor children grow up in deprived neighbourhoods.

Poor children are more frequently confronted with eviction because their parents cannot pay the rent.

Education, leisure and recreation, and cultural activities

The right of poor children to education

Article 28 of the CRC:

States Parties recognize the right of the child to education and make efforts to achieve this right.

"For example, school activities. Other kids do attend them. I think that is... Maybe it has become sort of normal. I've become used to it." (girl, 14)

"I don't like going to school when I don't have nice clothes. Then I don't want to go. They bully me because of my clothes. They say things like 'did you get them from the dustbin again?' Last year I was bullied a lot. I couldn't cope with it. Then I ran away from school a lot and I went to the shopping centre to think about it, or I went home. Then my father used to send me back and talked to the headmaster." (girl, 12)

The Dutch NGO Coalition for Children's Rights is extremely concerned about the restrictions imposed on poor children in exercising their right to education. The right to access to facilities such as education and equal opportunities for all children in the Netherlands must be guaranteed and realized in practice. Appropriate education plays an important role in halting the transfer of poverty from generation to generation. The concomitant costs, dropping out of school and study grants and loans are all factors involved in opportunities to escape from poverty by means of education. The current problems are as follows:

In relative terms more children from poor families attend special schools.

Children from poor families are more frequently bullied at school.

Children are underfed when they go to school.

Poor children do not go to school, but stay at home to work.

The parents encounter more frequent problems in paying the school fees since they receive the study costs allowance too late (bureaucracy).

Relatively more poor children drop out of school.

The Government's pre-school facilities policy is focused on courses to catch up with language arrears. However, this is insufficient; long-term effects can be achieved solely when the Government aims for the broad development of child competences.

The right of poor children to leisure and recreation

Article 31 of the CRC:

States Parties recognize the right of the child to rest and leisure, and to engage in play and recreational activities.

"I'm jealous of my best friend. She goes horse riding, and goes to karate and street dance clubs. So I'm very jealous about that." (girl, 12)

Poor children are often unable to practice organized sports or take part in cultural activities. However, municipalities often offer discounts on the membership of sports clubs, and leisure and cultural activities. Nevertheless, the membership fee is not the only cost incurred in sports and cultural activities; clothing and transport expenses are often also involved.

5.4 Recommendations to the Dutch Government

Tackle child poverty at the roots

Generic measures

Articles 2, 26

5.1 Tackle social inequality and ensure that the number of children in living in poverty is reduced by investing more government funds in children.

Articles 26, 27

5.2 Force a breakthrough in the perpetuation of poverty. Bring the financial capacity of and financial burden on poor families and the children and young people growing up in those families into equilibrium. This can be achieved by reducing the financial burden and increasing the financial capacity.

Articles 26, 27

5.3 Implement statutory measures to increase the income of families with children.

Articles 26, 27

5.4 Guarantee a minimum income for (families with) children. This minimum income may not fall below the social minimum of a rich country. Halt the stoppage of benefits and the consequent exclusion from the basic level to comply with Article 27 of the CRC.

Articles 26, 27

5.5 Make sure that parents can no longer allocate child benefits to debt restructuring.

Article 4

5.6 Integrate combating poverty in national policy in the form of regulations and guarantees for the local authorities. Include children as a specific target group in the Social Support Act. The municipalities need to allocate funds to poor children rather than merging this item in a general youth-care budget.

Specific measures

Article 19

5.7 The poverty policy is of importance to combating child abuse. Arrange for timely assistance as close as possible to and in the family, and whereby account is taken of the effects of living in poverty. Timely identification and prudent intervention are both conditions that need to be met.

Article 12

5.8 Ensure that the poverty policy focuses on the child. Create self-confidence and pride. Appoint a Children's ombudsman. Learn from the experiences of children, and involve them in decisions of relevance to them. Ensure that poverty becomes open to discussion – for and by

children.

Article 6

5.9 Offer more traineeships/workplaces to disadvantaged children.

Article 9

5.10 Take measures to deter the disintegration of families.

Article 9

5.11 Offer support to single men and women to prevent them from living in long term poverty – appropriate facilities that enable them to work – and which ensure that in the longer term they will be able to escape from the clutches of poverty (on the basis of the Swedish model).

Article 27

5.12 Implement innovative policy to transfer deprived neighbourhoods into showpiece neighbourhoods.

Guarantee access to facilities

Article 27

5.13 Bring the continual deterioration of the living conditions of poor children to a halt.

Article 2

5.14 Provide appropriate information about how parents and children can lay claim to their rights, obligations and opportunities. This is primarily the responsibility of the national authorities. The local authorities also need to provide appropriate information about the municipal policy. More equality must be achieved in the provision of special income support and information about the opportunities for discounts on activities.

Articles 24, 28, 31

5.15 Provide ready access to school, sports clubs and other leisure activities. Issue specific discounts on certain activities, such as sports and culture, to children in families living at subsistence level. In addition to offering access, also provide the necessary means, such as school meals (breakfast), football shoes and schoolbooks.

Article 24

5.16 Pay more attention to identifying children who are underfed as a result of poverty.

Article 3

5.17 Implement a univocal definition of poverty to identify the locations in which poverty occurs so as to improve the monitoring of child poverty and enable the policy to be adjusted accordingly. When doing so act in the interests of the child by adopting a broader, univocal definition of policy in line with that of other European countries rather than using the current definition restricted to socio-economic factors.

Article 2

5.18 Carry out a further analysis of the increasing number of children living in poverty. This investigation needs to examine all groups, inclusive of 'illegal' children.

Article 26

5.19 Withdraw the reservation to Article 26 of the CRC

This relates to a fundamentally positive attitude towards combating child poverty in the Netherlands. In making this reservation the Netherlands would not appear to be willing to make every effort to combat poverty.

6 Young people's participation

Introduction

Young people's participation is still in its infancy in the Netherlands. The Convention on the Rights of the Child is characterized by the 3 Ps, namely Provision, Protection and Participation. However, the Dutch Government would appear to have forgotten the last P of the Convention, since the Government's attention is focused almost exclusively on the 15% of young people who constitute what is referred to as 'the group of young people at risk' and ignores all other young people in the Netherlands. This one-sided focus is due to the Dutch Government's belief that the majority of young people will be able to look after themselves. Moreover, participation plays a marginal role in all policy. Consequently the Dutch Government is addressing problems rather than giving consideration to the favourable contribution that can be made by young people.

The Dutch Government has not drawn up a definition of young people's participation, and has not implemented a national overall policy. The young people's participation policy has been decentralized to the municipalities. However, the municipalities have not received sufficient time or support for the assumption of this responsibility. The municipalities are not under an obligation to conduct a young peoples' participation policy, and consequently it is a moot point whether all municipalities will actually do so. The support provided to young people's organizations has deteriorated on the abolition of institutional subsidies and the support provided to the regional *Vorming, Training en Advies* (Education, Training and Advice' VTA) institutions.

6.1 Recommendations from the UN Committee on the Rights of the Child, 2004

Recommendation 36 from the UN Committee on the Rights of the Child
Young people's participation (Article 12 of the CRC)

The Dutch Government needs to strengthen its support of the National Youth Council and youth organizations, and intensify its support of organizations of young people of foreign origin and integrate them into networks of dialogue and participation.

Follow-up given to the recommendations

The institutional subsidy provided to the National Youth Council has been. Although the subsidy was not discontinued, the Dutch NGO Coalition for Children's Rights is of the opinion that the Dutch Government has not followed up the recommendation from the UN Committee on the Rights of the Child by not strengthening its support of the National Youth Council and youth organizations. Nor has the Government adequately intensified its support of organizations of young people of foreign origin, and there has been virtually no integration of them into networks of dialogue and participation. The changes to the subsidy policy have greatly weakened the Dutch networks for young people's participation.

At the end of 2003 the Dutch Government made fundamental changes to its subsidy policy, also influenced by the wish to make more effective use of subsidies as an instrument, and to ensure that policy responsibilities were borne by the appropriate government layers. These general changes in the Dutch Government's subsidy policy have also had an influence on the support provided to young people's participation.

The new subsidy policy has resulted in the complete phasing out of the institutional subsidies provided to youth organizations. In the first instance organizations of young people with a disability were excluded from this phasing-out scheme. However, it has since been announced that the institutional subsidies for these organizations will also be phased out, as a result of which the institutional subsidies for these organizations will have been phased out completely after 2009.

According to the Government the subsidies are being phased out gradually to enable youth organizations to find other funding for their activities. The institutional subsidies have been replaced by two new subsidy schemes offering project subsidies, namely the *Buurt-Onderwijs-*

Sport Impuls ('Neighbourhood-Education-Sport Impetus, *BOS Impuls*) and the *Tijdelijke Stimuleringsregeling Vrijwilligerswerk voor en door Jeugd* ('Temporary incentive scheme for volunteer work for and by young people'). The *BOS Impuls* is also a temporary scheme, and all applications for subsidies must be submitted by municipalities. Consequently the *BOS Impuls* does not contribute to following up the UN Committee on the Rights of the Child's recommendation to strengthen the support given to the National Youth Council and youth organizations.

The *Tijdelijke Stimuleringsregeling Vrijwilligerswerk voor en door Jeugd (TSVJ)* was in operation from 2004 to 2006 inclusive. This temporary scheme made 7.1 million euros available to national volunteer organizations to strengthen the local volunteer networks and enable more young people to carry out local volunteer network. In the longer term this temporary incentive scheme was intended to train up to 19,000 new young volunteers. The reviews of the applications for a subsidy were based on factors such as innovation and disadvantaged young people. The *TSVJ* has been continued in the form of the *Tijdelijke regeling Vrijwillige Inzet voor en door Jeugd 2007-2008* ('Temporary scheme for voluntary deployment for and by young people, 2007-2008'). This scheme makes funds of 4.7 million available, and provides subsidies to comparable projects.

The Dutch NGO Coalition for Children's Rights emphasises the importance of structural rather than temporary financial support for voluntary projects for and by young people. The Dutch NGO Coalition for Children's Rights is sorry to see that the budget for the *Vrijwillige Inzet voor en door Jeugd* will no longer be available after 2009. The funds will be transferred to the municipalities, as a result of which there will be no further support for a national young people's participation network.

6.2 Trend

A variety of trends can be observed in young people's participation in the Netherlands. The major trends are the Government's negative focus on young people in the form of its concentration on problems and deployment of young people's participation as a means of prevention, and the decentralization and project-based nature of Dutch policy on young people's participation.

Negative focus

The Dutch youth policy is primarily focused on ensuring that young people do not fall between two stools, and on helping those young people who *have* fallen between two stools find their place. The Convention on the Rights of the Child is characterized by the three Ps, namely Provision, Protection and Participation. The Dutch NGO Coalition for Children's Rights is of the opinion that the Dutch Government has forgotten the last P of the Convention. There is no definition of young people's participation or national overall policy. Young people's participation is regarded as an element of preventive youth policy; it is a means of enabling young people to learn skills and to become independent and socially-involved citizens, and a means of preventing young people from dropping out from society. Young people's participation is not appreciated as an objective as such. In the opinion of the Dutch Government the objective of young people's participation is to ensure that young people can achieve an effective performance in *Schooling, work and society*

Consequently the Dutch Government focuses its policy on the 15% at risk of coming into problems rather than on the remaining 85% that the Government believes can look after themselves. The Dutch Government focuses primarily on the group of young people at risk since this is perceived as the most efficient use of the limited resources available. Trying to prevent young people from coming into problems was also the main objective of *Operatie Jong* ('Operation Young')³⁶. This emphasis on prevention was also reflected in the 12 items on *Operatie Jong's* agenda. None of these agenda items devoted attention to young people's participation or information for young people. The great emphasis placed on problems left no scope for attention to the positive contribution young people can make to society, or to the importance of enabling young people to develop into active citizens.

Decentralization

The young people's participation policy has been fully decentralized to the municipalities, and

the national policy is being phased out. The objective of this decentralization is to bring the decision-making process closer to the young people involved. The financial resources required to support the activities of youth organizations and training programmes designed to improve young people's participation are being decentralized. However, the Government has not issued the municipalities any guidelines or minimum requirements for local young people's participation policy; consequently the municipalities are not under an obligation to formulate policy relating to young people's participation, and municipalities opting to develop a young people's participation policy are all required to re-invent the wheel.

The quality of this policy – if there actually *is* a policy – varies greatly between the municipalities. It is certainly a moot point whether all municipalities possess the capacity and the resources required to conduct a high-quality young people's policy. The absence of a framework policy results in fragmentation in young people's participation.

Project-based policy

The Netherlands' young people's policy is largely of a project-based nature. There is no structural viewpoint on young people's participation. Nevertheless a large number of temporary policy projects and incentive schemes are continually being introduced, thereby resulting in a large number of policy plans – but little change in the implementation.

6.3 The Dutch NGO Coalition for Children's Rights' concerns

The right of the child to a personal opinion

A negative focus on young people

One of the Dutch NGO Coalition for Children's Rights major concerns is that Dutch youth policy does not assign priority to young people's participation. The Dutch Government has not formulated an explicit definition of young people's participation. The Dutch NGO Coalition for Children's Rights understands young people's participation as the opportunity for young people (between 0 and 18) to think about, take part in and be involved in the decision-making relating to issues of relevance to them. Consequently this extends beyond being merely a respectable member of the public who goes to school or is a member of civil-service organizations; it means that young people also have a say in the design of their environment.

Prior to the 2006 national elections the Dutch NGO Coalition for Children's Rights called on the new government to ensure for the intensive involvement of young people in the development of all new youth policy, and consequently also called on the government to encourage the development and guidance of young people's policy. Young people's participation in institutions, schools and government bodies needs a statutory basis³⁷, participation must begin at early an age as possible, and adults must take young people seriously. Young people are equally able to participate as adults, although the manner in which they participate will vary according to age category. Young people's participation is possible solely when society develops an attitude of valuing the opinion of young people. Professionals working with young people need to be trained to listen to young people's opinions and actively ask them for their opinion. The Government's negative focus results in its almost exclusive concentration on the group of young people at risk. However, youth policy should not be restricted to the group of young people at risk, and for this reason the Dutch NGO Coalition for Children's Rights advocates the implementation of an overall and favourable youth policy. Young people should not only be perceived as a potential source of problems, but also as a creative source in society who require support in their development. Providing this support in the form of material resources and training to young people who dedicate themselves to youth organizations, sports clubs and other voluntary organizations will enable them to develop into active members of the public and offer a creative contribution to society.

Decentralization

As such, there is nothing wrong with decentralization, and bringing decision-making closer to young people is a favourable development. However, the absence of a national framework policy results in fragmentation. In addition, pursuant to the decentralization of young people's participation policy national schemes are being phased out since these are to be transferred to the municipalities. However, it takes time to develop young people's participation policy, and the national schemes are being terminated before local replacement networks have been set up. Moreover, there is no guarantee that local young people's participation policies will be implemented, since the municipalities are not under an obligation to do so. However, should

municipalities opt to develop a young people's participation policy then they are under an obligation to inform the members of the municipal council about the policy they intend to develop and involve the relevant members of the public in the decision-making process. This offers new opportunities for young people's participation. Nevertheless, the requirements imposed on municipalities in the absence of guidelines to assist them in formulating this policy may result in municipalities regarding the development of a positive youth policy as an excessive burden.

The Dutch Government is of the opinion that young people's participation is now an element of the local democratic process and that it would be inappropriate for the Government to intervene in that process. However, this is a political choice made by the Dutch Government. The Dutch NGO Coalition for Children's Rights advocates the development of a national framework youth policy. Implementing this framework policy will ensure that municipalities are thoroughly informed about national and international developments in youth policy, that best practices are exchanged, and that municipal youth policies meet certain minimum criteria. The municipalities retain their powers to decide on the specific form of the local youth policy and the prioritization. However, the municipalities are no longer compelled to repeatedly re-invent the wheel, and they receive the guidelines they need to develop a positive youth policy that achieves an appropriate performance.

The decentralization of the financial support given to youth organizations and the training and advising of young volunteers is resulting in the deterioration of the national young people's participation network.

Subsidies for youth organizations

The Dutch NGO Coalition for Children's Rights is concerned about the changes in the Dutch young people's participation subsidy policy. Although the Dutch Government states that it recognizes the importance of young people's participation and engagement in civil-society organizations, this is not reflected in the support the Government gives to these activities in its youth policy. According to the Social and Cultural Planning Board (SCP) this is also applicable to the participation of all members of the public, and consequently the SCP has doubts as to whether the municipalities are in a position to provide appropriate support to voluntary work.³⁸

The phasing-out of the institutional subsidies provided to youth organizations has caused serious damage to the network of organizations that enable young people to devise and implement projects. The subsidies were withdrawn within a very short period of time, and there are few alternatives for these subsidies. The phasing-out of institutional subsidies and the transition to project subsidies has reduced the autonomy of Dutch youth organizations. Youth organizations wishing to come into consideration for subsidies are required to comply with priorities imposed by the authorities. Consequently youth organizations are less able to accommodate needs expressed by young people, thereby actually reducing the opportunities for young people to devise and implement social projects. These project subsidies increase the Government's control over the form of young people's participation.

The *Tijdelijke Stimuleringsregeling Vrijwilligerswerk voor en door Jeugd* ('Temporary incentive scheme for volunteer work for and by young people', TSVJ) does not restrict applications for subsidies to youth organizations largely operated by volunteers. Consequently smaller youth organizations are forced to compete with larger welfare organizations which can contract professionals to draw up applications for a subsidy. Youth organizations have much smaller resources available for these applications, as a result of which subsidies are more likely to be granted to applications drawn up by professionals. The transition from institutional to project subsidies has resulted in attention being focused on innovative projects. Often no funds are available to continue innovative projects which achieve favourable results.

The TSVJ increases the emphasis placed on the efficiency of projects carried out by youth organizations. The youth organizations are compelled to carry out projects that lead to quantifiable results. However, the Dutch NGO Coalition for Children's Rights is of the opinion that the short-term quantification of major results achieved by young organizations' projects is not feasible. The authorities would appear to focus on the number and nature of young people reached by a project rather than on what young people learn from a project and on what effect

this has on their performance as active members of the public. The outcome is more important than the output; unfortunately the outcome is also much more difficult to quantify.

The Dutch NGO Coalition for Children's Rights is also of the opinion that young people who are not members of a youth organization should be offered an opportunity and support to take initiatives to set up new youth organizations.

Training

The provision of support to youth organizations in the form of material resources, training and advice is of great importance to the appropriate performance of a young people's participation network. Providing training and advice to young people enables them to participate fully in society; young people need to acquire specific skills if they are to be able to participate in an appropriate manner, such as the ability to express their opinion clearly, and consequently this should be an important element of an overall positive youth policy. For this reason the Dutch NGO Coalition for Children's Rights is extremely disappointed about the termination of an important subsidy scheme for volunteer training. The welfare policy subsidy scheme granted the regional *Vorming, Training en Advies* (Education, Training and Advice', VTA) institutions institution subsidies for the low-cost training of volunteers in a wide variety of skills. The VTA institutions provided support to tens of thousands of volunteers in the form of training that enabled them to improve the quality of their activities and develop their personal skills. One of the VTA institutions' spearheads was young people's participation, and they provided training to many young people with key positions in youth organizations who were then able to disseminate their knowledge within their organizations.

The support given to training volunteers has now been decentralized to the municipalities, and a national framework policy relating to training volunteers is virtually absent. In view of the local policies' focus on preventive youth policy there is a threat of the entire training budget being allocated to endeavours to get the group of young people at risk back on the right track rather than to the continued support of young people's participation projects. In addition, it is uncertain whether young people are even recognized as a target group in programmes for the development of volunteers' competences.

Project-based policy

The last trend which was distinguished was the increasingly project-based nature of the Dutch youth policy. A long-term viewpoint on young people's participation is required to set the course of the policy. This long-term viewpoint serves as the basis for a structural policy that devotes continuous attention to young people's participation.

The right of the child to information

The provision of information is an important condition to be met for young people's participation, since young people can take full part in society only once they are aware of their opportunities and rights. The Netherlands has not implemented a national overall youth information policy. The youth information policy is an element of the preventive youth policy that falls under the responsibility of the municipalities. National youth information campaigns focus on the prevention of (health) problems amongst young people such as alcohol and drug abuse, becoming infected with sexually transmitted diseases, and injuries caused by fireworks.

The Dutch NGO Coalition for Children's Rights advocates the implementation of a national overall youth information policy laying down the minimum requirements to be met by municipal youth information policy. One of the major requirements relates to the need for the information to be compatible with young people's needs, and for this reason the information they receive should not be restricted to protecting them from hazards but should also extend to informing them how they can make their contribution to and exert an influence on their milieu. Consequently young people need to be involved in the preparation of (large-scale) information campaigns intended for them. This ensures that the provision of information is brought into line with young people's needs, since the young people are themselves involved in the dissemination of information (peer education).

The *Kinder- en Jongerenrechtswinkels* ('Child and Youth Legal Advice Centres') constitute an important element of the Dutch young people's information network, and consequently the

Dutch NGO Coalition for Children's Rights is extremely concerned about the Government's termination of financial support to these centres.

The provision of appropriate information is also of importance in rendering the national and local authorities' policy compatible with young people's milieu, and consequently the Dutch NGO Coalition for Children's Rights welcomes the development of a national Youth Monitor. However, the Dutch NGO Coalition for Children's Rights is disappointed to note that the Youth Monitor does not include indicators for young people's participation or the provision of information to young people.

Children's ombudsman

As stated earlier the Dutch NGO Coalition for Children's Rights advocates the appointment of a Children's ombudsman. The Children's ombudsman will also be able to monitor the right to participation and the right to information as laid down in the Convention on the Rights of the Child. However, the rights associated with participation would not appear to have been assigned priority in the Netherlands. A Children's ombudsman would be able to supervise the inclusion of young people's participation and the provision of information to young people in Dutch youth policy at both a national and local level.

6.4 Recommendations to the Dutch Government

Article 12

6.1 The Dutch youth policy needs to adopt a positive approach. For this reason the Government should draw up a National Plan of Action for Young People's Participation, in collaboration with the civil-society organizations active for young people, which specifies a long-term viewpoint on positive youth policy so as to counter the current ad-hoc nature of the youth policy. This National Action Plan should also extend to policy on the provision of information to young people. The National Action Plan for Young People's Participation should specify the Government's role as a centre of expertise, the minimum criteria to be met by municipal policy, and the role to be played by the civil-society organizations. This framework policy is necessary both to put young people's participation on the map in the Netherlands and to prevent fragmentation.

Articles 12 and 13

6.2 Ensure that young people are intensively involved in the formulation of new youth policies at all administrative layers. Young people need to be involved from the time of the issue identification for the policy right through to the implementation and evaluation.

Article 12

6.3 Municipalities should be placed under the obligation to formulate a young people's participation policy. The national authorities should offer guidelines to municipalities for the formulation of young people's policy so as to avoid the need for the municipalities to repeatedly re-invent the wheel. Young people must be involved in the development of this policy to ensure that it is compatible with their needs.

Articles 4 and 12

6.4 Arrange for the provision of structural and appropriate material support, and for regional and national youth organizations. These subsidies must be earmarked for youth organizations since their volunteers cannot usually compete with professional institutions.

6.5 Arrange for structural and appropriate training facilities that devote specific attention to young people's participation.

6.6 The professionalization of youth organizations must be supported by financing administrative grants. Young people need to be able to make time available to devote attention to youth organizations. The Government already provides administrative-grants support to political youth organizations and to student and pupil organizations; this support should be expanded to include all youth organizations.

6.7 Introduce a structural incentive scheme to enable young people to take their own participation initiatives, since many young people who are not members of a youth organization need to be offered an opportunity to participate.

Article 17

6.8 Arrange for adequate support for the young people's information network such as the *Kinder- en Jongerenrechtswinkels* ('Child and Youth Legal Advice Centres'), *Kindertelefoon* ('childline') and *Jongeren Informatiepunten* ('Youth Information Points'), so that young people know how and where they can participate.

6.9 Include indicators for young people's participation and young people's information in the Youth Monitor.

Articles 4 and 12

6.10 Young people's participation in institutions, schools and government bodies must be given a statutory basis.

Article 4

6.11 The Children's ombudsman to be appointed by the Government should be granted explicit powers relating to young people's participation.

Article 12

6.12 Participation must be encouraged from a very early age. and for this reason the training courses given to people who are to work with children should devote attention to how professionals can offer children scope for participation.

7 Juvenile justice

Article 37 of the CRC:

No child shall be subjected to torture or other cruel punishment. Neither capital punishment nor life imprisonment shall be imposed. No child shall be deprived of his or her liberty unlawfully or arbitrarily. Every child deprived of liberty shall be separated from adults. Every child of liberty shall have the right to maintain contact with his or her family and to legal assistance.

Article 40 of the CRC:

Every child alleged as or having infringed the penal law has the right to a fair hearing according to law and to legal assistance. Whenever appropriate and desirable States Parties shall seek measures for dealing with such a child without resorting to judicial proceedings provided that the human rights of the child are fully respected.

Introduction

Juvenile delinquency is more strictly dealt with than in the past. The policy is now focused more on 'tit for tat', i.e. rapid and, on occasion, harsh disciplinary action. The number of young people in detention is continually increasing. The coalition agreement of the new Balkenende Government (2007) states that "special efforts need to be made in dealing with the increasing levels of juvenile delinquency". The new Council of Ministers is intending: to expand the range of penalties; to adopt a targeted approach to groups at risk; to arrange for prevention in the form of parental support, coaching, and preventing children from dropping out of school; and to give a firm response to truancy. However – and as is apparent from the points giving the Dutch NGO Coalition for Children's Rights cause for concern – on occasion sight is being lost of the pedagogical nature of juvenile justice.

7.1 Recommendations from the UN Committee on the Rights of the Child, 2004

Recommendation 59 from the UN Committee on the Rights of the Child

Juvenile justice (Articles 37 and 40 of the CRC)

The Dutch Government should ensure the full implementation of international juvenile justice standards. The legislation must be amended such that life imprisonment cannot be imposed on anyone between the age of sixteen and eighteen. Since 1 February 2008 this is regulated by law.

The detention of juvenile offenders may be used only as a measure of last resort. The Dutch Government must avoid the detention of juvenile offenders together with children admitted to youth institutions for behavioural problems.

Follow-up given to the recommendation

Trying sixteen and seventeen-year-olds as adults

The legislative proposal to preclude the lifelong imprisonment of sixteen and seventeen-year-olds is a step in the right direction. However, the maximum term of imprisonment that can be imposed under adult criminal law has recently been increased from 20 to 30 years. This implies that young people could also be imprisoned for 30 years. In addition, the reservation that the Netherlands made with respect to Article 37 (b) of the CRC still exists, and the Dutch Government would not appear to be of the intention to withdraw this reservation.

This implies that in the Netherlands sixteen and seventeen-year-olds can still be tried under adult criminal law. The young persons involved do not serve their sentence in a pedagogically-oriented youth custodial institution, but in an adult penal institution. This is in conflict with Article 37 (c) of the CRC. According to figures from the National Agency of Correctional Institutions ('Dienst Justitiële Inrichtingen'), in 2005 a total of 21 minors (aged from sixteen to eighteen) were placed in pre-trial detention in an adult penal institution. Fifteen young people served (part of) their sentence in an adult penal institution. In many cases arguments such as the "severity of the offence" and "shocked legal order" gave rise to the court's decision to apply adult criminal law.

The case of Murat D.39, a seventeen-year-old boy who murdered the deputy headmaster of his school in 2004, gave rise to a great deal of commotion and discussion. Criminal-law experts advocated that the case be tried under juvenile criminal law. Despite this, the boy was sentenced under adult criminal law. On 27 April 2007 even a seventeen-year-old mentally retarded boy was sentenced to five years' imprisonment under adult criminal law for a (double) murder (LJN: BA4035, Court of Groningen, 8/630413-06).

Measure of last resort

The number of young people placed in closed institutions has increased greatly over the years, from 714 in 1991 to no less than 1,708 in 2001. On 1 January 2006, 2,497 children were detained in youth custodial institutions, of which 1,177 on grounds of criminal law. The remaining were placed under civil law or aliens law. Over the entire year 2006, a total of 7,313 children were deprived of their liberty, of whom 4,726 on grounds of criminal law.. The current capacity is approximately 3,000 places in closed institutions, and the cells are fully occupied. The capacity has been doubled in the last ten years. In 1997 the number of places in closed institutions was only 1,410. The placements of young people in closed institutions are seldom tested against the measure of last resort criterion laid down in the CRC. This gives rise to the question as to whether the courts too readily impose the sanction of detention. General Comment No. 10 Children's Rights in Juvenile Justice states that the legality of a pre-trial detention should be reviewed regularly, preferably every two weeks, and that the court should arrive at a final decision on the criminal proceedings within six months. The Netherlands does not meet these requirements.

Putting minors placed under civil law together with convicted minors

The previous Minister of Justice (Mr Donner) submitted a legislative proposal for the separation of minors placed under civil law from minors placed due to a conviction (*wetsvoorstel gesloten jeugdzorg* ['legislative proposal on closed youth care'])⁴⁰. This proposal was adopted by Parliament on 3 July 2007 and passed to the Senate. The separation of civil-law cases from criminal-law cases entered into force on 1 January 2008, but actual implementation is not yet completed. Its implementation is accompanied by the risk that the regime governing convicted young people detained in youth custodial institutions will become more austere in the future. In view of the contents of Article 37 (c) of the CRC, it will then be important that the legal position of this group of young people, as given shape in the *Beginselenwet justitiële jeugdinrichtingen* ('Youth Custodial Institutions Act'), is fully safeguarded.

The current amendment to the Youth Care Act – in force since 1 January 2008 – does not offer sufficient safeguards regarding the rights of parents and children, and depends too much on the institutions' sense of responsibility. The legislative proposal is formulated in too general terms, in particular with respect to restrictive measures, such as temporary isolation, forced medication without consent of the youngster and the withdrawal of leave.

7.2 Trend

Fragmentation of the authorities' responsibilities for young people

The appointment by the Balkenende IV Government of a Minister for Youth and Family Affairs demonstrates that the Government gives priority to problems concerning children. Nevertheless, there is reason for some reticence, since fragmentation is still an issue in view of the division of responsibilities between the Ministry of Justice, the Ministry of Health, Welfare and Sports, and Ministry of Education, Science and Cultural Affairs. For example, the new Minister for Youth and Family Affairs – who does not have a Ministry – is responsible for civil youth policy whilst the Minister of Justice remains responsible for juvenile criminal law; the new Minister for Youth and Family Affairs is 'only' jointly involved. This is a shortcoming now youth care and judicial youth care have major interfaces and need to work closely together, for example within the context of the *wetsvoorstel gesloten jeugdzorg* ('legislative proposal on closed youth care')⁴¹.

Long waiting lists

The waiting lists for places in youth custodial institutions are still too long, and as a result many young people sentenced to a penal measure of treatment (*Plaatsing in een inrichting voor jeugdigen* ['Placement in a youth custodial institution'], PIJ) have to wait for as long as a year for

a suitable place for treatment. According to Article 11 of the *Beginnelwet justitiële jeugdinrichtingen* ('Youth Custodial Institutions Act'), this group of young people, referred to as *PIJ-passanten* ('PIJ transients'), should receive a suitable place for treatment within three months. However, in practice, this is often impossible. This can result in a delay in the treatment and, ultimately, in an extension of their deprivation of liberty. This is at loggerheads with Article 37 (b) of the CRC. The Dutch Government still assigns inadequate priority to this serious problem. In view of the nature of the measure, the time the children are in detention while awaiting a place for treatment is not deducted from the sanction.

Behavioural programmes do not adequately comply with the 'what works' criteria and international standards

The behavioural programmes of closed institutions do not comply with the 'what works' criteria that now play an important role in the Netherlands in relation to the deployment and effectiveness of youth programmes. The 'what works' criteria relate to scientific testing, selection criteria for the target group, demonstrable effectiveness, focus on learning problem-solving skills, encouragement of the motivation of the participants, consistent implementation, and continual evaluation. It is also striking to note that the CRC and the *Havana Rules* are not cited as reference frameworks for these approaches. Some institutions, such as the Glen Mills School and Den Engh, use behavioural programmes for young people with problems.⁴² However, evaluations of both projects and a Youth Care Inspectorate report severely criticize these programmes. The Glen Mills School is not a youth custodial institution, and is consequently not bound by the *Beginnelwet justitiële jeugdinrichtingen* ('Youth Custodial Institutions Act') and the associated legal-position requirements, such as a supervisory committee. The young people experience the internal regime as harsh. The Youth Care Inspectorate concluded in December 2007 that the Glen Mills School does not fulfil the Youth Care Act requirements regarding the right of youngsters to complain and use a confidential counsellor ('*clientvertrouwenspersoon*'). Furthermore, restrictive measures that are not regulated by law, like *holdings*, are applied. This is in violation of international obligations. It is undesirable that these methods do not offer attention to or scope for talking about and/or coming to terms with past experiences.

Safety in youth custodial institutions is not guaranteed

The September 2007 report "Safety in youth custodial institutions: An assignment with risks", by four Dutch Inspectorates concluded that the living, treatment and working climate was unsafe for juveniles in all fourteen youth custodial institutions. According to the March 2008 Defence for Children International report "Violence against Children in Conflict with the Law", reliable, effective and transparent data on violence against children in conflict with the law is lacking. It also concludes that the legislation on the use of violence and disciplinary measures in youth custodial institutions is not in conformity with international standards. For example, closed or solitary confinement is allowed and used regularly. Children are placed for several days in an isolation room or in their own room (room placement), in violation of article 67 of the *Havana Rules*.

Police interrogation: insufficient safeguards when questioning minors

The Netherlands still does not grant parents or lawyers the right to attend the first phase of police interrogation. This is in conflict with the prohibition of pressure and Article 40, paragraph 2, of the CRC. Since no recordings or notes are made of the police interrogation, there are virtually no safeguards against police violence or excessive psychological pressure on juvenile suspects. Nor are the parents informed immediately (as required by rule 10, paragraph 3, of the *Beijing Rules*), but rather 'as soon as possible'. An experiment will begin in 2008 whereby lawyers may be present at the initial police questioning. However, the legal profession has a great deal of criticism about this experiment. For example, the lawyers may not make any remarks, may not consult with their client and must remain outside their client's view.

The UN Committee against Torture is concerned about Dutch practice relating to this issue, and on 18 May 2007 came to the following conclusion: "With regard to the European part of the Kingdom of the Netherlands, the Committee was concerned that persons in police detention did not have access to legal assistance during the initial period of interrogation."

Minors no longer need to be heard during a session on the initial custodial pre-trial detention

(Article 65, Code of Criminal Procedure). Although the court summons the minor, the court then requests the minor to sign the waiver, which has quite far-reaching consequences since the minors often do not realize what they are signing. This procedure is in conflict with Article 40 of the CRC.

On occasion young people are picked up and detained without legitimate reason. For example, during a peaceful demonstration on 5 May 2007 two fourteen-year-old youngsters were detained in a police cell separately from their parents and without the required legal safeguards.

Resocialization and after-care

The repeat offence figures for young detainees are alarmingly high, a situation which is in part due to the lack of resocialization programmes and the minimal after-care. Young people leaving a youth custodial institution ('JJI') need appropriate after-care, for which increased funding is required. During the period 1997 to 2003, the percentage of ex-JJI pupils (pupils discharged from the youth custodial institutions) (once again) prosecuted for an offence within two years of leaving the institution fluctuated between 60 and 54 percent⁴³. Studies carried out by the Research and Documentation Centre of the Dutch Ministry of Justice reveal that the percentage of repeat offenders (not necessarily for the same type of offence) is highest amongst ex-JJI pupils. Within six years of their discharge, 78% of this group has had one or more contacts with the law.⁴⁴

An additional problem is the major shortage of child and youth psychiatrists, a problem which will not be resolved within the near future.

Halt and restorative justice

Young people between twelve and fourteen years of age arrested by the police for, for example, vandalism, shoplifting/theft or causing a nuisance with fireworks, are offered the choice of the law or a so-called Halt reaction. The Halt procedure enables young people to rectify what their misdemeanour caused by carrying out a number of hours work without coming into contact with the law. In 2005 there were 22,122 Halt settlements, and in 2006 21,364. During recent years, the figure has fluctuated around the 20,000 mark. The Halt Bureau was evaluated in 2005/2006. It transpired that participation in the Halt procedure has little effect on repeat offending or on behaviour. However, there are other elements with an important effect.⁴⁵ Halt is currently being revised, whereby the objective should be to ensure that more resources are deployed in settlements of this nature.

The Netherlands should make better use of restorative justice. The Netherlands has made increasing use of restorative justice, forms of victim-offender mediation and group conferences, since the nineteen-nineties. However, more uniformity and a clear position within criminal law are required. At present the implementation is based on experiments, some of which have already been discontinued since the Ministry of Justice has not extended the subsidies. International regulations, such as the EU's binding Council Framework Decision on the standing of victims in criminal proceedings, place the Netherlands under the obligation to do more with restorative justice.

Suspensive effect of objections relating to community service

When the court orders a young person to perform community service and that person does not carry out the community service (in an appropriate manner) then the public prosecutor can convert the community service into detention. Should the young person disagree with the public prosecutor's decision then he or she can lodge an objection which will, ultimately, result in a court hearing. However, some time ago this procedure was amended whereby objections – including those lodged by minors – no longer have a suspension effect. When, for example, the notice relating to the performance of community service is delivered to the wrong address then the minor will not have an opportunity to perform the community service. The public prosecutor will then convert the community service into detention. Although the minor can lodge an objection to this decision, the minor will nevertheless be detained until the hearing. This is not an appropriate procedure, and is also in conflict with the European Convention for the Protection of Human Rights and the CRC.

Hazards posed by the new Gedragsbeïnvloeding jeugdigen ('Behaviour influencing, juveniles') legislative proposal

The *Gedragsbeïnvloeding jeugdigen* legislative proposal was submitted to the Parliament on 20 October 2005, and Parliament passed the legislative proposal on 19 June 2007. The Senate will debate the proposed law later this year. It is intended to expand the legal opportunities to adopt a more education/re-education-oriented approach. A number of proposals are made, such as the introduction of a behaviour modifying order for young people and an expansion of the opportunities to use a combination of juvenile sanctions. However, it is still unclear whether deprivation of liberty is an issue with this order, and there is no reference to the mandatory provision of advice by a forensic behaviour scientist who has received the requisite training. Moreover, creating the opportunity to make a 'sanction cocktail' results in the risk of the loss of proportionality since sanctions can be totted up and the total of all these sanctions is specified as the maximum. However, at the same time the juvenile court is offered more opportunities to tailor the sanctions closer to the young person's needs and help prevent him or her from going further astray. According to the proposal, the failure to complete an order (in the appropriate manner) automatically results in conversion to detention on the demand of the Public Prosecutions Department. This is in conflict with the legality principle. Additional care will be required when the parents/carers of the juvenile delinquent are involved in the behaviour modifying order.⁴⁶

The legislative proposal came into force on 1 February 2008. Only five modules for the behaviour modifying order have currently been officially accepted (by the *Erkenningscommissie Gedragsinterventies Justitie*). This means that the implementation of the new order is severely delayed, because the lack of modules means that a program for youngsters with a duration of some months cannot yet be realized..

DNA collection is increasing

DNA collection from convicted juveniles has been possible since February 2005. Information stated in the first Annual Report from the *Nederlandse DNA-databank voor strafzaken* ('Netherlands DNA Databank for criminal prosecutions'), published in March 2007, reveals that material from more than 1,600 minors above the age of eleven is already stored in the databank. The *Wet DNA-onderzoek bij veroordeelden* ('DNA investigation (offenders) Act') does not make a distinction between adults and minors. The lawmakers would appear to have forgotten that the Netherlands has a special juvenile criminal law in which paramount importance is given to pedagogical principles. This is undone by storing the DNA profile of a minor in a databank and, in so doing, regarding the minor as a potential persistent offender.

No objection can be made to the collection of cell material. However, an objection can be made to its storage, i.e. only once the DNA material has been collected. Only a few courts consider whether the child's interest weighs heavier than society's interest.⁴⁷ In practice, the public prosecutor's order to determine and process the DNA profile of a minor is communicated solely to the minor and not to his or her parents or counsel. This is in conflict with Article 504, Code of Criminal Procedure, since the legal representative or counsel of a minor below the age of sixteen must lodge a notice of objection. When the legal representative or counsel is not informed, it is highly likely that the minor will not make use of the opportunity to object.⁴⁸

Poor information and access to data

There is a lack of data and statistics about the Dutch administration of juvenile justice, including data relating to the youth custodial institutions. There is poor access to the information that is available. Moreover, it is certainly a moot point as to whether policy-makers make use of this information and, if so, how. In their evaluation of the *Beginzelenwet justitiële jeugdinrichtingen* ('Youth Custodial Institutions Act')⁴⁹ the researchers severely criticize the access to and usefulness of the information about the enforcement of the deprivation of liberty of young people. They have recommended that specific attention be given to these issues in view of the recommendations the UN Committee on the Rights of the Child made in 2004, recommendations that apparently until now have received little follow-up.

Prep Camps/education campuses

Prep Camps, or campuses, are homes set up pursuant to a Youth Unemployment Task Force

educational project in which a group of premature school-leavers are readied to transfer to a training place or work. There is a group of 40,000 young people under 23 who are in need of care since they have no job, are not following a course, and have no starting qualification. The project assumes a stay at a Prep Camp of between six and nine months (day and night). Pilot-trial projects have been carried out in Amsterdam, Rotterdam and Tilburg. According to a study (Berenschot 2006), there is still a great deal of uncertainty about the deployment of the Prep Camps. For the time being participation is voluntary, although some are suggesting that participation should be compulsory and that the young people could possibly be placed in closed campuses.

The Dutch NGO Coalition for Children's Rights is concerned about the ease with which the Minister intends to make these projects structural and even use compulsion on minors. Will the Prep Camps educational project be deployed as a punitive measure? Approaches of this nature always need to attach paramount importance to pedagogical issues. Projects of this nature may never lead to a disguised means of applying criminal law. Preventive measures and appropriate and effective youth care are of essential importance, and consequently 'Prev' should be used rather than 'Prep'. Young people have the right to customization and a positive approach.

7.3 The Dutch NGO Coalition for Children's Rights' concerns

- substantial growth in the numbers of children in closed settings;
- application of adult criminal law to a small group of minors aged sixteen and seventeen, and the resulting detention in adult institutions;
- excessively long waiting lists for placement in a institution for treatment;
- threat of a more austere criminal-law regime following the separation of convicted young people from young people placed under civil law;
- insufficient testing of behavioural programmes against the 'What Works' criteria and the CRC;
- shortage of child and youth psychiatrists;
- no right of parents and lawyers to attend the first phase of police interrogation;
- extremely high re-offence figures for juvenile detainees and a lack of resocialization programmes and after-care;
- possible spending cuts in initiatives such as Halt;
- too little structural use of restorative justice, while pursuant to international standards the Netherlands is under the obligation to do so;
- introduction of the behaviour modifying order without appropriate safeguards;
- excessive and much too rapid collection of DNA from minors suspected or convicted of an offence, without a clear weighing of interests or national guidelines;
- absence of an appropriate data collection system, and poor accessibility of and usefulness of information relating to the administration of juvenile justice, including data relating to youth custodial institutions.
- deployment of Prep Camps as a disguised means of applying criminal law.

7.4 Recommendations to the Dutch Government

7.1 Withdraw the reservations to Articles 37 and 40 of the CRC.

Article 37, under c

7.2 Make sure that young people, including minors ages sixteen or seventeen, are not detained together with adults.

Article 37 in conjunction with Article 40, paragraph 3

7.3 The application of juvenile criminal law should be the basic rule, even in the event of extremely serious offences.

Article 40, paragraph 2, under b

7.3 Increase funding to remove the waiting lists for treatment places in the closed institutions. The lead times in juvenile criminal law must be shortened. Implement a sound monitoring system for children in closed institutions.

Article 40

7.4 The separation of minors placed in closed institutions under civil law from convicted minors may not result in a more austere criminal-law regime.

Article 40, paragraph 4

7.5 Arrange for a clear and accessible data collection system. Take due care with the development of the programme and the evaluation of the deployment of discipline-oriented approaches. The focus must be on the welfare of the child and on proportionality.

Article 40, paragraph 3, under b, and paragraph 4

7.6 Allocate funds to Halt, and implement more restorative justice practices such as victim-offender mediation.

Article 40, paragraph 2, under b, and Article 37, under c

7.7 Introduce a rule whereby parents and lawyers may attend the first phase of police interrogation.

Article 40, paragraph 4

7.8 Allocate funds to the adequate deployment of youth care to prevent young people, including the group below the age of twelve, from going further astray (prevention). Allocate funds to appropriate after-care.

Article 37, under b

7.9 The legislator should make an explicit statement about the deprivation-of-liberty nature of the intended behaviour modifying order.

Article 40, paragraph 3, under b

7.10 Make sure that minors are excluded from the inclusion of DNA material in databanks, or at least that a specified and controlled weighing of interests takes place.

Article 37, under b

7.11 Do not allow Prep Camps to become a disguised means of applying juvenile criminal law.

8 Leisure time and public space

Article 15.:

States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

Article 31, paragraph 1:

States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. 2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Introduction

Children play in the time they are free to use as they wish. During the past years leisure time for children and young people has acquired a higher place in the political and policy agenda. This is due to a number of developments:

- there is a threat of health problems due to increasing obesity at an early age, in part associated with a lack of exercise
- a lobby has for many years advocated an improved play area policy based on interdisciplinary collaboration (traffic, planning, health, nature, childcare, welfare and youth work, sport and recreation),
- the promotion of liveable neighbourhoods and child-friendly residential environments is of benefit to the image of the entire residential environment; it increases the value of real estate and retains vital residents in the city.
- excellent facilities are offered within the scope of the *Brede Scholen* ('all-inclusive schools'), both to offer childcare facilities to parents so that they can work and the improve the opportunities for children to develop. A statutory regulation (the Aartsen/Bos Motion, 2005) places schools under the obligation to offer after-school care when parents so request;
- planners, urban planners and designers are devoting renewed attention to the various use values of outdoor space

There is an increasing insight into the importance of a green and natural environment to the healthy development of children.

Children and young people are largely dependent on their residential surroundings during their leisure time, and they are intensive users of public space. However, great pressure is being imposed on the quality of the public areas. This pressure is due to the greatly increased land prices, increases in scale, the growth in motorized traffic, and the emergence of the compact city. Not infrequently the interests of young people lose out to other interests.

Playing outdoors is an important form of recreation for many children, and in addition to home and school leisure time is an important development milieu for children and young people. The public space was one of the themes of the Balkenende II Government's youth agenda (*Operatie Jong*, 'Operation Young'). Within the scope of the *Childfriendly Cities* network the Association of Netherlands Municipalities, *Jantje Beton*, the National Organisation for Playgrounds and Youth Recreation and the Ministry of Housing, Spatial Planning and the Environment collaborated in drawing more attention to the importance of appropriate play areas in the public domain. The Netherlands became affiliated with this international network in 2003.

A standing committee of the Parliament has processed a Private Member's Bill on outdoor play areas which has resulted in the Ministry of Housing, Spatial Planning and the Environment requesting municipalities to reserve at least 3% of the built environment for formal play areas and to develop a play area policy plan.

A number of important characteristics of the Netherlands within this context are the high population density (the scarcity of space in the Netherlands and the built environment), the high bicycle density, the high car density, the reasonable distribution of young people's facilities such

as schools, neighbourhood centres, libraries, sports clubs and music schools. However, as a result of the increasing traffic and the location of these facilities their accessibility is not optimum, and access is not guaranteed to all children and young people. A development is underway in which the facilities are concentrated in multi-functional accommodation pivoting on schools. Although this increases the harmonization of the facilities, it is nevertheless without prejudice to children's need for other neighbourhood facilities during their leisure time. As a result of their residential situation and the socio-economic background of their families a substantial group of children in the Netherlands needs to make use of the public space and facilities in their immediate residential surroundings.

Recommendations from the UN Committee on the Rights of the Child, 2004
None.

8.1 Trend

Urban planning/spatial planning

New legislation within the scope of the Memorandum on Spatial Planning policy document (2004) has assigned the local authorities more responsibilities in spatial planning policy. The high demand for housing is imposing great pressure on the available land. Increasing the density of urban areas is at odds with the interests of the public, and certainly with the interests of young people, namely the liveability of the immediate residential surroundings and opportunities for recreation close to house. The outdoor areas are under great pressure, whilst it is important that the outdoor play areas are both *available* and *accessible* to children and suitable for *play*. In absolute terms the amount of public space is continually decreasing. Children often have to make do with the corners that are left over once all other needs (of adults) have been met. In addition, the attention that is given to public space and young people is increasingly based on feelings of insecurity and hindrance.

Residential neighbourhoods are being developed or redeveloped within the context of urban expansion, infill locations, and urban renewal. For cost reasons the public space in new large-scale housing developments is often reduced to the space needed for traffic and car-parking. The majority of the development and construction work is contracted out to property developments. The financial returns from the land development are at odds with the social function of the public space, such as serving as a play area for young people. The Dutch NGO Coalition for Children's Rights sees a positive trend in the growing attention of the Government for the importance having green spots in the cities and the importance of experiencing nature.

Brede school ('all-inclusive schools'): an institution or a network of neighbourhood facilities?

The concept of the *Brede school* dates from the nineteen-nineties and is intended to increase the opportunities for children's development by creating cross-links between the various milieus (home, school, neighbourhood/leisure time). The extended school-day projects were primarily intended to offer richer leisure time to children for whom access to sport, culture, neighbourhood activities and youth work, etc., was not self-explanatory. Over the course of the years these have been supplemented with new objectives, and attention has shifted to the buildings, to *day arrangements*, and to childcare. The realization of the *Brede School* has increasingly been determined by the interests of other players and policy themes (such as land development issues, financial and management issues, and the participation of women in the labour market). The adoption of the van Aartsen/Bos Motion (by the Parliament) has resulted in schools being placed under the obligation to offer care from 7.30 until 18.30. The *Wet op de kinderopvang* ('Childcare Act') and new primary-school regulations have exerted an influence on children's leisure time. Children's leisure time is increasingly becoming institutionalized and brought under the responsibility of the schools. In addition, school hours are also the subject of discussion. It is not yet clear what influence these developments will have on children's leisure time and opportunities for play. The facilities are not yet equipped for this change in policy, and there are insufficient well-trained supervisors. The policy discussions would appear to lack a viewpoint on children's leisure time and play; paramount importance is given to participation in the labour market and the economic motives.

Decentralization of policy

In 2007 Acts including the Welfare Act were incorporated into the *Wet maatschappelijke ondersteuning* ('Social Support Act', WMO). In the future many facilities for young people will be

financed in the form of tendering on the basis of the belief that increased market forces will be beneficial to the quality of the facilities. It is not yet clear what consequences this will have for the facilities which – on the basis of their preventive function – are focused in the leisure time of children and young people in the neighbourhood. The *Wet maatschappelijke ondersteuning* ('Social Support Act', WMO) could challenge the municipalities to make use of the opportunities offered by the new Act to invest in play areas, youth work and other leisure-time facilities for children and young people in the neighbourhood.

Safety regulations, increasing claim culture

In March 2007 the *WAS (Warenwetbesluit Attractie en speeltoestellen*, ['Commodities Act Decree on Fairground and playground equipment']) had been in force for ten years. These regulations have resulted in the disappearance of a large amount of municipal play ground equipment; the evaluation revealed that although the number of accidents has decreased slightly, the accidents have become more serious. The Working Conditions (ARBO) Act regulations, regulations related to the *Wet Kinderopvang* and other regulations relating to the use of accommodation have also exerted an influence on children's opportunities for play. The one-sided emphasis on safety and society's increasing claim culture have influenced the conduct of parents and professionals in relation to children's opportunities for play. It would appear that the focus is increasingly on the prevention of risks rather than offering challenges (Dilemma's rond spelen, 2003).

The attention that is given to public space and young people is increasingly based on feelings of insecurity and hindrance; the lack of available space, the quality of the layout of the spatial environment *and* the increasing intolerance towards children and young people are exerting an influence on their opportunities for play and assembly in their leisure time.

Mediaization

The virtual world has become an important leisure-time activity for children and young people, and children spend a lot of their (free) time at the PC. They meet friends via chat programs, and play games. (Commercial) television channels broadcast children's programmes throughout the day. As a result of this mediaization playing outdoors is no longer self-explanatory (M. du Bois Reymond, in 10 jaar kinderrechten in Nederland, 2006).

8.2 The Dutch NGO Coalition for Children's Rights' concerns

Opportunities for play in the neighbourhood are not self-explanatory

The various user groups are imposing a great pressure on the available local space, and children need to compete to play in the space. Studies have revealed that in the major cities between as many as 25% to 30% of the children between four and twelve now (almost) never play outdoors; this group is referred to as 'indoor children'. There is a concern that this lack of outdoor play and independent mobility will retard children's development (in terms of their motor system, physical condition, language, spatial insight, creativity, social skills and democratic development). A number of consequences are already becoming apparent, such as the increasing weight of children and young people, the increasing number of complaints with the locomotor apparatus and other health complaints in later life, more stress in families in which the children cannot go outdoors, and fewer social contacts in the neighbourhood for both the children and their parents – in turn resulting in reduced social cohesion. A standard for play areas is required, as is specified in standards such as the *Jantje Beton*/National Organisation for Playgrounds and Youth Recreation standard which request at least 3% of the built environment be defined as formal play area. Municipalities can make use of different standards. In addition to reserving square metres for formal play areas it is also necessary to provide informal play areas. This will require collaboration between the policy sectors (spatial planning, housing, public space/parks and gardens *and* youth policy). Creating play areas involves both reserving and laying out space *and* promoting the availability of supervisors (youth workers and sport and game supervisors). They and the parents can ensure that the neighbourhoods where children and young people grow up offer appropriate play environments, with both formal and informal play areas.

Formal and informal play areas are required

Only a small fraction of children's play takes place in formal play areas, and this consequently gives cause to the need to recognize the presence of children in the entire public space. In addition, it also gives cause to the need for attention to the quality (alongside the quantity of at

least 3%) of the formal play areas. Attention also needs to be given to more vegetation in the public space, since this is of importance to the healthy development of children and young people.

to reduce health problems like obesity the importance of moving for children get much attention. In these discussions it appears that playing is equal to sport. However a playground is more than just a space for sports. Above all free playing has a broader interest than the health of a child. Education, daily child care or sports clubs increasingly claim playing. Playing is broader; the free choice of children to spend their leisure time and their play itself is at stake.

Institutionalization of leisure time

A continually increasing amount of leisure time is spent in institutions and indoors, as a result of which acquire too little knowledge of and experience with the 'real' world. Children have a need of their own time and space alongside home and school which they, together with others of comparable age, can use as they wish and discover the real life – in a safe *and* challenging child-friendly environment. Children have the right to assembly, and after school they need to be able to play with other children in the neighbourhood and from other schools.

Leisure-time pedagogues are indispensable for many children and young people: Are these the supervisors and CCTVs? Or are they the volunteers and professionals who, on the basis of the needs of the children and young people, are present for those in need of extra attention?

It would appear that in the future the choice of the primary school will increasingly determine children's leisure time activities. The challenged confronting the school boards and the parties they collaborate with in the school's neighbourhood – the childcare organizations, institutions and organizations active during children's leisure time – is to develop a joint viewpoint on children's leisure time and the facilities that need to be made available to them, and together with the children and their parents. Children require their own free space where they can play in child-friendly residential surroundings. Children *also* develop their talents in their leisure time. Youth workers increasingly need to demonstrate the (learning) effect of their 'play' programmes. This is in conflict with Article 31 of the CRC. Playing in leisure time is, as such, a worthwhile activity; leisure-time pedagogues, together with childcare supervisors, teachers and youth care workers, offer the framework for play – both professionals and volunteers, each of whom have their specific expertise and role, and on the basis of their shared perceptions of the need for basic facilities in the neighbourhoods which simultaneously serve as a social safety net.

Poor accessibility of facilities

Children are the traffic consumers of the future, and consequently it is necessary to encourage children's independent mobility. Children and young people need to be able to make independent or safe use of the routes between the facilities and (public spaces) they visit, as well as the routes from and to school and the routes from and to the play facilities. When this is not feasible children need to be brought to and collected from their destinations by car. This is detrimental to the children's independent development, and to their health. New housing developments and redevelopments need to devote more attention to these opportunities for mobility, as well as facilities for play and play areas. These issues exert a greater influence on the opportunities to play outdoors than the quantity (TNO, 2007, Karsten *et al.*, 2001).

Temporary funding is disastrous

The local authorities (the municipalities) have traditionally borne the responsibility for the provision of facilities for children and young people's leisure time. These facilities offer – on the basis of a preventive role – opportunities for children and young people to play and meet in their neighbourhood. Both the 'youth' and 'liveability and social cohesion' elements of the new *Wet maatschappelijke ondersteuning* ('Social Support Act', WMO) are of importance to children and young people, not solely in view of the economic necessity of enabling more women to participate in the labour process and to reduce the youth care waiting lists, but also to offer children the opportunities for play and assembly to which they are entitled. Or do children and young people receive attention from youth care policy only when (there is a threat that) they become noticeable due to undesirable behaviour? In view of the problem-oriented approach of the new (youth) policy it is not self-explanatory that use will be made of the opportunities the new Act offers for play and assembly facilities.

Influence of commerce

Adults should fulfil their pedagogic responsibilities by creating the conditions attached to children's ability to play. Commerce exerts an increasing influence on children's leisure time since children, young people and their parents constitute an interesting group of customers. Children need to become assertive to withstand the pressure from commerce and to reserve scope for play. The authorities need to fulfil their pedagogic responsibility by preventing the commercial exploitation of children.

Young people's image

Press reports on cases of undesirable conduct exert an influence on the public's opinion of children and young people. However, children, teenagers and young people are joint users of public space, and they must be able to make use of them in their leisure time.

Increasing regulations and claim culture

Children require an environment offering plenty of opportunities for play where they can explore their limits. This environment needs to be safe and, at the same time, challenging. The increasing number of regulations and the growth of the claim culture have resulted in the removal of large amounts of play equipment. Is the fear of claims and liability predominant in the design of the play environment, or is account also taken of the need for challenges on the basis of a pedagogic approach? How much scope are children offered to experience their own adventures, make their own discoveries, explore their limits, resolve conflicts and overcome their (and our) anxieties? Unfortunately not all accidents can be avoided. Children also need to learn how to deal with hazards, and adults bear the pedagogic responsibility of enabling them to do so. Learning how to deal with risks is part of life, and children in part learn how to do so during their play: "Every child also has a right to a bruise!"

8.3 Recommendations to the Dutch Government

Article 31:

8.1 Arrange for guarantees for play areas

8.2 Encourage the development of (municipal) play area policy. Specify a play area standard. Implement these guarantees at a national level, and arrange for quality.

8.3 Include guarantees in the new land development regulations for formal *and* informal play areas in the built environment. Harmonize spatial planning policy and youth policy. Arrange for 'green play areas': trees children can climb in, and shrubs in which they can build dens.

8.4 Prevent the institutionalization of leisure time

8.5 Make sure that the development of the *Brede Scholen* ('all-inclusive schools') incorporates a relationship with the neighbourhood facilities. Assign a higher priority to the public domain and play areas for young people in all development/redevelopment plans. Arrange for facilities with a variety of functions (recreation, assembly, education, childcare and care) in the neighbourhood as viewed from a holistic perspective of children. Encourage intersectoral collaboration, and provide financial support to the local authorities to enable them to do so. Exchange best practices. Abolish regulations which impede collaboration. Encourage the development of child-friendly routes so that children and young people can move around in independence. Arrange for the accessibility of play areas in the neighbourhood.

8.6 Fund structural basic leisure-time facilities at neighbourhood level

Allocate funds to an active, inventive and inviting range of leisure-time facilities for all children and young people in the neighbourhood, i.e. public play areas, youth work and (adventure and building) playgrounds, childcare, sport and culture. Implement a government policy which does not focus solely on groups at risk; invest in all children and young people, inclusive of those who cause no trouble. Impart a new impetus to youth work.

8.7 Arrange for structural funding of basic leisure-time facilities for children and young people in the neighbourhood. Avoid dependency on development financing; reach the appropriate agreements with the local authorities. Encourage the presence of neighbourhood pedagogues

(and/or youth work for children, teenagers *and* young people) at neighbourhood level.

8.8 Avoid the Nimby (not in my backyard) effect

8.9 Communicate about youth in a positive manner. Make sure that the unfavourable image of badly-behaved teenagers and youths in the public spaces does not determine the image of the entire age category. Arrange for the positive participation of children and young people in the neighbourhood in which they grow up.

8. 10 Prevent the growth of the claim culture: arrange for safety and challenges

Do not lose sight of the interests of the child (at play) when drawing up and interpreting national and local regulations in the various policy areas. Give consideration to the amendment of the WAS (*Warenwetbesluit Attractie- en speeltoestellen*, ['Commodities Act Decree on Fairground and playground equipment']), to the encouragement of case law, and to a fund for any claims on private owners.

9 Education

Article 28

The child has a right to compulsory and free primary education. States Parties promote the availability and accessibility of secondary education to every child, make higher education accessible to all on the basis of capacity, make educational and vocational information and guidance available to all children, and take measures to reduce drop-out rates. School discipline shall be administered in a manner consistent with the child's human dignity and in conformity with the present Convention. International collaboration in matters relating to education is of great importance.

Article 29

The education of the child shall be directed to the development of the child, respect for human rights, respect for the own cultural identity and for the national values of the own country and other countries, the spirit of peace, friendship and tolerance, and respect for the natural environment. Everyone must be at liberty to establish educational institutions subject to the observance of the principles set forth in the present Convention and to conformance with the minimum standard laid down by the State.

Introduction

The rights of the child and education are two concepts with at least relationships with each other:

- rights to education: all children to school;
- rights in education: schools based on the rights of the child
- education in rights: education in the rights of the child.

The relationship between education and the rights of the child is problematical. At present Dutch schools and educational policy-makers have little awareness of the fact that the CRC also has a message for education.

An appropriate understanding of the Dutch educational system can be obtained only after an explanation of the distinction between public education and denominational education. More than one hundred years ago the Dutch Government introduced the full financial equality of public education (organized by the municipalities) and denominational education which is primarily based on religion, namely Catholic, Christian, Jewish and – in particular, during the past decade – Muslim. Denominational schools can also have a basis other than religion, namely a different philosophy or educational method. The national authorities have the right to determine the general content of the education and the obligation to pay all schools in precisely the same manner. This dichotomy in the Dutch educational system is laid down in Article 23 of the Constitution.

9.1 Recommendations from the UN Committee on the Rights of the Child, 2004

Recommendation 52 from the UN Committee on the Rights of the Child

Dealing with truancy and human rights education (Article 28 of the CRC)

The Dutch Government should expedite efforts to address non-attendance and the dropping out of school. The Dutch Government should also ensure that affordable and quality early education is available for all children.

The Dutch Government must also ensure that human rights education is included in the school curriculum.

Follow-up given to the recommendation

Human rights education

The Dutch authorities issue extremely broad outlines of the content of the education during the compulsory period of school attendance, and offer schools a great deal of discretion in interpreting those guidelines in terms of the curricula. The rights of the child are not stated specifically in these guidelines, and the imposition of an obligation on schools to include the rights of the child is not compatible with the autonomous schools policy.

A new Act of 9 December 2005 stipulated that the education provided at all levels of education is 'is jointly focused on the promotion of active citizenship and social integration'. Although this offers a basis for education in the rights of the child it does not constitute a statutory guarantee for this education. The detailing of this provision is left entirely to the education sector.

The Ministry of the Interior organized a working conference on education in human rights on 26 March 2007. The final conclusion advocates a more explicit role for education in human rights at schools: "More attention needs to be devoted to education in human rights at schools, in the provision of information, and in the vocational training of professionals. The authorities also need to set a good example in their compliance with human rights."

The Dutch authorities are currently drawing up a plan of action for education in human rights. In May 2007 the new Minister of Education, Science and Cultural Affairs, Mr Plasterk, sent a letter to a number of educational institutions in which he referred to the recommendations from the UN Committee on the Rights of the Child of January 2004 and requested attention to be given, without obligation, to the CRC.

9.2 Trend

Education is currently a subject of a great deal of discussion in the Netherlands, both amongst politicians and amongst educational professionals. Two key problems are receiving a particularly great deal of attention in these discussions. The debate on primary schools, in particular, is focused on the contrast between white and black schools – and, more specifically, on the unequal distribution of indigenous children and children from the ethnic minorities between the primary schools, whereby differences in culture, socio-economic class, race, religion and linguistic competence are intermingled with each other. How can children receive effective language teaching in the Dutch language (reading and writing) when the great majority have an insufficient command of Dutch?

The second key problem, which is not entirely unrelated to the first, is the low efficiency of secondary education. Too many pupils leave secondary school without adequate vocational qualifications. Pupils from the ethnic minorities constitute a relatively large proportion of this group.

The two key problems (black and white schools and too many school leavers without a diploma) are both subjects of a great deal of discussion within Dutch society. A parliamentary investigation currently underway (in 2007) is reviewing the effects of the educational modernization of the past decades. The Dutch NGO Coalition for Children's Rights (Dutch NGO Coalition for Children's Rights) is extremely interested in the results from this discussion. The Dutch NGO Coalition for Children's Rights has selected two of the multitude of the (other) problems confronting the Dutch educational system for a further review below:

- *Education for All*: access to education for all children
- safety at schools

Education for All: the right to education as a right of the child

All children to school: 'Education for all', according to the slogan of the international campaign managed by UNESCO.

The right to education is, alongside the right to health care, is a key right of the child. This right extends to all children, rich and poor, indigenous and ethnic, with and without a legal residence status, boy and girl, upper class and lower class, with and without a disability.

Within this sense the prohibition on discrimination as expressed in Article 2 of the CRC and numerous other human-rights documents is of particularly great applicability to education.

Education is essential to the personal and social development of every child. Consequently the right to education is very closely related to the right to development as laid down in Article 6 of the CRC.

In general, the Netherlands has realized the right to education to a very great extent. However, there are three groups of children for whom this right has not been realized in full:

'illegal' children

Formally speaking, there is no doubt: children without a residence permit may and must attend

school. However, on occasion there is ignorance on the part of school managers (registering 'illegal' children is illegal) and fear on the part of 'illegal' parents (registering a child at school will bring the Aliens Police into action). Although in a formal sense both lines of reasoning are incorrect, they nevertheless determine reality for 'illegal' children.

children with behavioural problems

In practice several thousand children exhibit behavioural problems to an extent such that it is impossible to keep them at regular (primary and secondary) schools whilst there are no adequate facilities available for them at special primary schools or training centres. It has not proven possible to realize the 'jointly to school again' policy principle in full for these children.

highly-gifted children

In statistical terms 2% of the pupils (with an IQ of 130 or higher) can be regarded as highly-gifted children. Schools increasingly have enrichment material available to encourage these children and offer them an intellectual challenge. Twenty-five special gifted-profile secondary schools have been designated which offer high-quality education to (highly) gifted children. Nevertheless, in practice it transpires that several hundred highly-gifted children become bogged down at school in one way or another, i.e. ignorance and lack of expertise on the part of teaching staff and/or bullying by other pupils. The problems confronting these children are often underestimated. The *Salamanca Statement* issued by UNESCO, June 2004 (item three of UNESCO document ED-94/WS/18) expressly requests attention for highly-gifted children.

Safety at schools

Schools, in analogy with families, must be a safe place for children. Schools decreasingly offer the requisite physical and social safety. The key problem is that the feelings of insecurity are not caused by the teachers, but by the pupils, due to (the threat of) physical violence, theft, bullying, the possession of weapons, racism, right-wing extremism, discrimination against homosexuals, Internet insults, sexual intimidation and exploitation (this last by loverboys, boys who develop a relationship with a girl and then sexually exploit her in the form of youth prostitution), and vandalism during excursions and school trips. All of the above occur at Dutch schools, in particular secondary schools and in the immediate surroundings of the schools (in the neighbourhood, the shops, and public transport). The pupils are both offenders and victims. In addition, the parents of pupils are becoming increasingly intimidating and violent; they call at school to 'sort out' the teacher. It should be noted that these references to violence at school do *not* relate to violent conduct on the part of teachers or school managers in the enforcement of school discipline. Corporal punishment administered by teachers or other school staff has become sporadic to an extent such that it is not explicitly prohibited in Dutch education legislation.

The Inspectorate of the Education Service's Education Report 2005-2006 refers to the growing school safety problem. During her presentation of the previous Government report on the children's to the UN Committee on the Rights of the Child on 19 January 2004 the State Secretary, Ms Ross-van Dorp, of the Ministry of Health, Welfare and Sports referred to the murder of a teacher by one of his pupils to indicate the severity of the problem.

It would not be truthful to state that the problem of school safety is not being addressed. All schools are under the obligation to draw up a safety plan and publish their plan in the school prospectus. A *Centrum voor School en Veiligheid* ('Safety at schools centre') has been set up to serve as an information centre for the education sector. In addition, training courses are provided for teachers, prevention projects have been initiated, etc. In general, the education sector is of the opinion that the schools are burdened with the problems that occur in society.

9.3 The Dutch NGO Coalition for Children's Rights' concerns

Education for All: The right to education for all children

The three – mutually incomparable – groups of pupils for whom the right to education is not fully guaranteed each have a right to extra specific attention from the authorities. This relates to:

- the improved provision of information to the education sector explaining the specific nature of the three problems relating to the right to education
- additional schooling facilities inside or outside the regular schools.

Safety at schools

The pupils, in particular, are involved in activities which reduce safety at schools. When expressed in the terms of the CRC both young victims and young offenders have rights: the right to care and attention, the right to education, and the right to safety.

The actions taken against juvenile offenders need to comply with all requirements the CRC imposes on forms of criminal law. These children have the right to special attention and the right to learn from their mistakes; an exclusively punitive approach is ineffective, and it does not help the young offenders. For this reason it is wise – and for all offences – to devote more attention to restorative justice and to forms of peer group mediation. Whenever possible conflicts at school should not result in the expulsion of a pupil; schools, by their very nature, constitute ideal communities for the use of alternative approaches of this nature.

What young people say about safety at schools

A study carried out by the JOB Interest Organisation for Young People in vocational education and training revealed that although the percentage of pupils following a secondary vocational education that do not feel safe at school is low – 7% – it has nevertheless increased by 3 percentage points within two years. The number of students that emphatically stated that they felt safe declined greatly from 80 percent in 2005 to 64 percent in 2007. As was the case in 2005, 20 percent of the students stated that they were occasionally intimidated. 3 percent stated that they were (very) frequently intimidated. The percentage of students who stated that they occasionally suffered from sexual intimidation increased from 12 percent in 2005 to 13 percent in 2007. 3 percent stated that they (very) frequently suffered from sexual intimidation.

9.4 Recommendations to the Dutch Government

Article 28

9.1 arrange for the full realization of the right of children without a legal residence status to education, provide schools with the necessary information, and minimize the formal regulations.

9.2 arrange for sufficient facilities for the group of pupils with behavioural problems and if so required, created 'intermediate facilities' to avoid compelling these pupils to stay at home.

9.3 for highly-gifted pupils: expand the existing facilities for highly-gifted children. Adopt a flexible approach to initiatives intended to improve the position of these pupils: this is in their interest *and* in society's interest.

9.4 intensify the attention given to school safety, and implement methods such as restorative justice and peer group mediation.

9.5 make education in human rights a compulsory element of the school curriculum. Make knowledge of human rights and the rights of the child compulsory elements of the vocational courses for secondary and/or primary school teachers.

10 A child-rights approach to development cooperation

Introduction

The Convention of the Rights of the Child (CRC) places a relatively great emphasis on the importance of development cooperation to encourage compliance with the rights of the child in developing countries. The last paragraph of the Preamble to the Convention and articles 4 (implementation obligations), 17 (mass media and information/material), 22 (refugee children), 23 (disabled children), 24 (right to health) and 28 (right to education) all refer directly to the need for development cooperation. In addition, articles 7(2), 11(2), 21(e), 27(4), 34 and 35 of the CRC refer to the importance of other forms of international collaboration, such as the conclusion of other agreements for the further protection of children. Within this context the UN Committee on the Rights of the Child has noted that the practical implementation of the Convention is a "cooperative exercise for the States of the world".⁵⁰ The CRC implies that countries such as the Netherlands – which are in a position to help other countries in the implementation of the Convention by means of development aid, the provision of knowledge, information or technical support, or by other means – are also expected to make every effort to do so. According to the UN Committee on the Rights of the Child the Convention should form the framework for international development assistance related directly or indirectly to children and the programmes of donor states should be rights-based.⁵¹ The implications of this include the need for the target for international development assistance of 0.7 per cent of gross domestic product to be met, for combating poverty to be assigned a high priority, and for the recipient states of the international aid and assistance to allocate a substantive part of that aid specifically to children.

Recommendations from the UN Committee on the Rights of the Child, 2004
None.

10.1 Trend

The situation of children in developing countries has improved greatly during the past fifty years. During the period from 1980 to 2001 the number of poor families that have to survive on 1 dollar a day per declined from 40 to 21%.⁵² The mortality rate of children under the age of five has been drastically reduced, and more children than ever before survive childhood diseases.

When they formulate and implement their poverty policy do the governments of developing countries, and the Dutch Government in particular, take adequate account of *all* articles of the Convention and the Conventions' most important basic principles such as non-discrimination, a child-orientation, and participation?

Visibility of children in the Dutch international cooperation

During the past four years the Dutch Government has indicated its wish to 'mainstream' the children and young people target group in its poverty reduction policy. However, during this period the link between the problems of children and young people in developing countries and the poverty reduction policy has not been made to an adequate extent. The target group is, for example, inadequately integrated in the priority themes of the Dutch Government's international poverty policy.

The education, HIV/AIDS and reproductive-health themes constitute favourable exceptions. Within the scope of 'Education for All' the Dutch Government is one of the few countries to have fulfilled its education commitments, and invests more than 60% of its total development cooperation budget in the education sector. In addition, the Dutch Government's HIV/AIDS policy incorporates an adequate response to the UNAIDS and UNICEF reports on the psychosocial and economic consequences of HIV/AIDS for children. Within the HIV/AIDS policy framework more specific attention has been given to the consequences of HIV/AIDS for children during the past four years, and funds have been made available to alleviate those consequences. In addition, the Ministry of Development Cooperation is supporting national and international organizations in the implementation of the Programme of Action of the United

Nations International Conference on Population & Development in Cairo (1994), whereby special attention was devoted to the improvement of the reproductive health of women and young children. However, notwithstanding these favourable examples, to date the development of the Dutch poverty policy has not extended to the formulation of a pan-sector viewpoint and the associated partner policy for the children and young people target group.

Absence of a viewpoint

It would appear that an important reason for the absence of a more explicit viewpoint on children and young people in relation to combating poverty is the Dutch Ministry of Development Cooperation's departure from a focus on target-groups, in favour of a sector approach in the years since 1999. Until that time the Dutch Government was very progressive in this field, and often assumed an international pioneering role in mapping violations of the rights of the child.⁵³ However, this has changed since 1999, and the Government now supports the sector plans of the governments of the developing countries. In so doing the Dutch Government fell in line with the dominant practice in contemporary bilateral and multilateral help. The switch to sector support also had consequences for the manner in which the Dutch Government integrated the children target group in its policy. Evaluations reveal that children and civil-society organizations for children have virtually no say in the sector plans supported by the Dutch Government. The recognition and appreciation of the role played by children and child-oriented organizations in participating in the decision-making can be of great importance to the realization of sustainable child-oriented development and the rights of children and young people.

Education

The prevention of dropouts is essential if *all* children are to be offered high-quality education and a future. However, to date there is no really effective policy and little funding is available to counter children dropping out of school. During the past four years the Dutch development-cooperation policy was dominated by the tendency to allocate funds to access to primary education, while quality of education was largely neglected.⁵⁴

Pursuant to the Convention on the Rights of the Child all children should be provided high-quality education, and consequently also those children who live on the streets or are victims of extreme forms of child labour. All too often these two groups are not taken into account when referring to the 'education sector'. However, the formal education sector should also ensure that these children, who have other learning needs and opportunities for learning, are also granted access to high-quality education. Although this will involve additional time, effort, energy and funds an explicit, innovative and modified policy for this marginalized group of children is absolutely necessary. Nevertheless, during the past four years few appropriate education projects have been developed for these children in difficult circumstances (such as what is referred to as 'informal' or 'non-formal' education). In relative terms the donors and national governments have placed little emphasis on the development of these relatively small-scale projects and have allocated much larger funds to the formal education-sector plans and the associated blueprints.⁵⁵ The integration of specific projects for children living in difficult circumstances in pan-sector education plans would be beneficial to the entire education sector and to reaching *all* children.

International and national watchdog

During the past years both the international debate on 'children and violence' and the debate on the consequences of HIV/AIDS for children have given cause to great demands for pan-sector and multidisciplinary collaboration. For this same reason there are strong arguments for the formation of cross-sector national youth organizations such as a Children's rights ombudsman or a pan-sector body to be incorporated in the Government, for example a national children's rights watchdog or a minister for youth and family affairs. These bodies and persons should be given a mandate to test the sector plans and their implementation against the guarantees and implementation of the CRC. The Pinheiro Report on violence against children also, for example, recommended pan-sector youth care and referred to (inter)national watchdogs. In many countries a pan-sector, inclusive and coherent youth policy of this nature will first require modifications of policy and restructuring.

It would be good for the Dutch Ministry of Development Cooperation to draw up a proactive (partner) policy and make funds available to get the pan-sector international and national youth care off the ground to achieve compliance with the rights of the child and to link this closer to

combating poverty and safety. Time will tell whether adopting this approach will enable the Ministry of Development Cooperation to guarantee the integral rights of the child more than in the past and, on the basis of the 'non-discrimination principle', integrate them more in its combating poverty policy. Within this context the Dutch Government is already collaborating with Dutch organizations for children's rights and development organizations in the *Kennisforum Kinderrechten* ('Rights of the child knowledge forum'). It would be highly advisable to promote this collaboration between the ministries and the Dutch civil-society organizations as well as – and in particular – at an international level.

10.2 The Dutch NGO Coalition for Children's Rights' concerns

Visibility of children in the poverty policy

The Dutch international poverty policy should target poverty reduction among children and young people. This is not only necessary because this is an obligation arising from the ratification of the Convention on the Rights of the Child, but also because this target group is growing at a tremendous rate. At present the gap between the rapid growth in the group of healthy and schooled children in the developing countries and their poor prospects is too great. This increases the likelihood of high-risk conduct, turmoil and of the disruption of society. Conversely, the large numbers of children who have completed primary school possess a great potential in terms of a better future for the developing countries and for the following generations.

Much more emphasis on high-quality education and a link to employment

During the past four years the Dutch Government has been extremely active in fulfilling its financial agreements relating to 'Education for All'. However, notwithstanding these efforts it is a moot point whether financial donor support to education sector plans was the sole appropriate alternative. When conducting the dialogue on the education plans with the governments receiving development the Netherlands can, in collaboration with the other donors, bring the various facets of a high-quality education sector to a more prominent place on the agenda. The Dutch Government can assume more of a pioneering role, as a result of which – and thereby, within the local context of the relevant country – it will be possible to develop effective strategies to resolve the dropouts problem and to provide high-quality education children who do not currently go to school. To date the Dutch interventions, inclusive of the policy relating to education-sector support, have made too few links between education and the prospects of children and young people who have completed primary school. In view of the increasing size of the group of young people who have completed primary school and the potential risks if the members of this group are not offered prospects the Dutch Government needs to devote much more attention than has hitherto been the case to secondary (vocational) education *and* the link to employment for young people.

Children and violence

It is important that the Netherlands becomes a party to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict within the near future. The Netherlands has already adopted a favourable standpoint to the first Pinheiro report on violence against children (outside of armed conflict) and has endorsed the UN Resolution⁵⁶ relating to this report. The Netherlands contributed to making the UN study of children and violence feasible by virtue of financial support. However, and more specifically, a review of the development-cooperation policy of the past years reveals that the Dutch development-cooperation policy does not yet encompass an adequate approach to motivating governments of developing countries to make urgent and integral links between the safety of children and combating poverty. To counter violence to children and, in so doing, give children all over the world an opportunity to grow up in a more balanced manner the Pinheiro report urges urgent trans-sector measures which presume an addition to the current rather demarcated sector approach. This transformation of the poverty and safety policy tailored to young people shall, in addition to the political will, also require funding, bilateral dialogue, and the participation of the various players in society. The achievement of the MDG targets is also greatly dependent on the ability of children to grow up in safety and on the full integration of the recommendations from the Pinheiro research team in the policy.

Besides bilateral programmes, is the Netherlands also a staunch supporter of multilateral

programmes, including UNICEF. This has been used as an argument to counter criticism that a greater focus on children in development cooperation is required. In the view of the Dutch NGO Coalition for Children's Rights this is not a valid argument. The Dutch NGO Coalition for Children's Rights also has the impression that Netherlands is not actively supporting the child rights based approaches within UNICEF, which currently seem to be uneven,

10.3 Recommendations to the Dutch Government

Articles 4 and 12

10.1 The Dutch Government should approach development cooperation from the perspective of the rights of the child. This implies, for example, that within the scope of bilateral aid more attention needs to be devoted to the promotion of the participation of young people, children and child-right organizations in the formulation of sector plans of relevance to children and young people (for example, education, health care and law).

Article 2

10.2 In the dialogues with the countries receiving aids the Dutch Government needs to play a more prominent role in placing both the integration of the CRC and the associated principles such as non-discrimination, child-orientation and participation and compliance with the principles higher on the agenda for national development plans. In addition, the Dutch Government – and in analogy with the nineteen-nineties – once again need to play a pioneering role in drawing international attention to children in extremely difficult situations. In view of the magnitude of this problem it will be necessary for the Dutch Government to collaborate with other EU member states and its bilateral partners in giving shape to a child protection policy that helps guarantee the rights of *all* children. This is also in line with the European Commission's Communication 'Towards and EU Strategy on the Rights of the Child' and the Action Plan. This requires the Dutch Government to formulate a flanked policy for children in extremely difficult circumstances, and to make funds available to ensure that explicit attention is devoted to these groups of children in each of the priority themes.

Articles 28 and 12

10.3 The Dutch Government should continue the donor support to the education sectors in the key countries. It is advisable that the Dutch Government places greater emphasis than hitherto on the quality of education and the reduction of the number of dropouts in meetings of those sector working parties of which the Netherlands is a member.

In view of the scope, nature and potential of the employment problem amongst young people in the developing countries the Dutch Government should assign the link between education and employment for young people a much more prominent role in its poverty policy.

Articles 19, 34, 35, 36, 39

10.4 The Netherlands should visibly integrate the recommendations of the Pinheiro report on children and violence in its international poverty policy.

Article 38

10.5 The Dutch Government should ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

11 Recommendations from the UN Committee on the Rights to the Child to the Netherlands, 2004

Recommendation 9 from the UN Committee on the Rights of the Child, 2004

Recommendations that have not or inadequately been followed up

The Dutch authorities have not or inadequately followed up a number of recommendations from 1999. These relate to the appointment of a children's ombudsman, the devotion of attention to alternative care and the need to seek alternatives for residential institutions, combating female circumcision, and human rights education.

Recommendation 11 from the UN Committee on the Rights of the Child, 2004

Reservations (Article 51 of the CRC)

The Netherlands has made three reservations (relating to articles 26, 37 and 40) and a number of interpretative statements relating to the UN Convention on the Rights of the Child.

Developments

No reservations have been withdrawn. In its General Comment No. 10 (2007) on *Children's Rights in Juvenile Justice* (2007) the UN Committee on the Rights of the Child made the following statement with respect to the reservation to Article 40 of the CRC (it must be possible for minor offences to be judged without the presence of a lawyer and without the possibility of appeal): "A number of States Parties have made reservations regarding this guarantee (article 40 (2)(b)(ii) CRC), apparently assuming that it requires exclusively the provision of legal assistance and therefore by a lawyer. That is not the case and such reservations can and should be withdrawn".

The Dutch NGO Coalition for Children's Rights' recommendation to the Dutch Government:

Withdraw all reservations.

Recommendation 13 from the UN Committee on the Rights of the Child, 2004

Amendment of national legislation (general implementation measure)

National legislation relating to education in minority languages and juvenile justice should be brought into conformity with the CRC.

Developments

Education

A number of secondary schools offer lessons in Arabic and Turkish. In the Province of Friesland lessons are offered in the Frisian language at primary school and the first years of secondary school.

In 2004 the Government decided to abolish the *bekostiging van Onderwijs in Allochtone Levende Talen* ('Financing of education in living ethnic languages') regulation since the regulation had not proven itself in practice.

The Framework Convention for the Protection of National Minorities came into force in the Netherlands in June 2005. The Netherlands has stated that it regards Frisians as a national minority in the sense of the Framework Convention, but that ethnic minorities do not fall under the protection of the Framework Convention.

Juvenile criminal law

More information about juvenile criminal law is given in the relevant section of this report.

Recommendation 15 from the UN Committee on the Rights of the Child

Youth Commissioner (general implementation measure)

The Youth Commissioner should assume the responsibility for the coordination between the national and local authorities involved in youth policy and ensure that the Commissioner is allocated sufficient resources. An evaluation of this position should be carried out with a view to establishing a permanent mechanism to coordinate the implementation of the CRC.

Developments

The Youth Commissioner was appointed pursuant to (*Operatie Jong*, 'Operation Young'), a collaborative project between the Ministry of Health, Welfare and Sports, Ministry of Education, Culture and Science, Ministry of Justice, Ministry of Social Affairs and Ministry of the Interior and Kingdom Relations which began in January 2003. *Operatie Jong*, managed by a *Commissaris Jeugd- en Jongerenbeleid* ('Commissioner for youth policy') was also focused on the identification and removal of bottlenecks in the coherent policy. The project ultimately resulted in a youth agenda listing 12 recommendations that would need to be addressed by the Government. The *Jong* project bureau closed down on 1 January 2007, and the Youth Commissioner is no longer in office.

The new Government that took office at the beginning of 2007 includes a Portfolio Minister for Youth and Family Affairs. The Minister has a virtual ministry rather than a physical ministry, and civil servants from other ministries (on occasion in part) fall under this Portfolio Ministry. The Minister shall coordinate the entire youth policy. However, the Minister has a shared responsibility for a number of policy areas, such as childcare and juvenile criminal law. This is a pity.

The Dutch NGO Coalition for Children's Rights' recommendation to the Dutch Government Arrange for a clear children's rights policy and a Minister with an own ministry and budget. Take measures to provide for continuity.

Recommendation 18 from the UN Committee on the Rights of the Child

National Action Plan (general implementation measure)

The Netherlands should expedite the preparation of a plan of action pursuant to the UN 'A World Fit for Children' special session of the General Assembly (May 2002). This plan of action should take account of all aspects of the Convention.

Developments

The Netherlands presented the *Nationaal Actieplan Kinderen* ('National Plan of Action for Children', NAP) in September 2004. This was based on consultations held with children and young people on the NAP's four themes, namely:

- A healthy life
- Improved education
- Protection and care
- HIV/AIDS and sexual health

The NAP begins with an overview of a number of recommendations the UN Committee on the Rights of the Child submitted in 2004 and lists the Dutch Government's response to these recommendations. The NAP also summarizes the policy and projects receiving subsidies from the authorities, all concentrated on the four aforementioned themes.

The Dutch 'A World Fit for Children +5' national report was published in April 2007 and submitted to the UN in New York.

The Dutch NGO Coalition for Children's Rights' recommendation to the Dutch Government Develop indicators to be used in testing Dutch youth policy.

Recommendation 21 from the UN Committee on the Rights of the Child

Children's ombudsman (general implementation measure)

The Netherlands should establish an ombudsman for children to monitor the implementation of the CRC. The ombudsman for children should be able to receive and deal with complaints.

Developments

No Children's ombudsman has been appointed. A legislative proposal for the appointment of a Children's ombudsman was submitted to Parliament in 2001. The legislative proposal has not been discussed. The Dutch Government has taken no further initiatives and has stated that it is awaiting the discussion of the legislative proposal by Parliament.

On 18 April 2007 the National Ombudsman, Equal Treatment Commission, Dutch Data Protection Agency and the Netherlands Institute of Human Rights submitted recommendations to the Minister of the Interior and Kingdom Relations on the formation of a *Nationaal Instituut*

voor de Rechten van de Mens ('National Human Rights Institution'). This Institution should be in a position to submit recommendations to the authorities and deal with complaints from the public.

The Dutch NGO Coalition for Children's Rights' recommendation to the Dutch Government

Appoint a Children's ombudsman as quickly as possible. The ombudsman's role should be comprised of monitoring, advising and providing information, as well as receiving and investigation complaints.

The Children's ombudsman should harmonise the ombudsman's work with the National Ombudsman and the *Nationaal Instituut voor de Rechten van de Mens* to be set up in the future.

Recommendation 23 from the UN Committee on the Rights of the Child

Specification of the budget allocated to youth affairs (Article 4 of the CRC)

The Netherlands should pay particular attention to the full implementation of Article 2 of the Convention by making clear which part of the total government budget is allocated to the implementation of the economic, social and cultural rights of children, in particular those children belonging to the economically disadvantaged groups.

Developments

There is no clear summary of government expenditure on children's issues. This is due to the division of policy fields relating to children between the various ministries and between national and local administrative layers.

The Dutch NGO Coalition for Children's Rights' recommendation to the Dutch Government

Make clear which part of the total national budget is allocated to children.

Recommendation 25 from the UN Committee on the Rights of the Child

Data collection (Article 4 of the CRC)

The Dutch Government should develop a system of data collection for children. This system should pay particular attention to vulnerable groups of children such as children in youth care, victims of abuse, sexual exploitation and trafficking, and children in conflict with the police or the law. The resultant data should be used as the basis for the development of policies.

Developments

A system of indicators of this nature has not been introduced to date. Although the Dutch authorities began work on the development of a national youth monitor several years ago this has yet to be published. However, a number of provincial youth monitors (in the provinces of Utrecht and Zeeland) and an urban youth monitor (in Rotterdam) are in use. These monitors do not review identical fields; for example the Rotterdam monitor reviews solely physical and mental health of children and young people from the age of 0 to 18 inclusive.

The national youth monitor will provide access to many existing Dutch youth databases. The monitor will contain data of children and young to the age of 23 inclusive, and shall be comprised of two layers. The first layer will consist of 8 key indicators in the fields of labour, education, safety, health and well-being. These key indicators are based on a total of 57 indicators comprising the second layer of the monitor. The monitor will not collect specific information about vulnerable groups of children.

In 2006, 2007 and 2008 civil-society organizations collaborating in the Kids Count project (kinderen in tel) mapped the living conditions of young people in each province and municipality and drew up a municipality ranking based on twelve indicators. These indicators are derived from the Convention of the Rights of the Child. The study yields an insight into the well-being of children and their circumstances in all Dutch provinces, municipalities and neighbourhoods within these municipalities. The objective of Kids Count is to promote debate based on figures between those responsible for youth policy and youth organizations. The twelve indicators are:

- youth unemployment
- juvenile crime
- children with an educational disadvantage
- school absenteeism
- child mistreatment
- children in sheltered homes

- children in families on benefits
- children in deprived neighbourhoods
- infant mortality
- child mortality
- teenage mothers
- public play areas

The Dutch NGO Coalition for Children's Rights' recommendation to the Dutch Government Arrange for the rapid publication of a youth monitor which also devotes attention to vulnerable groups of children. Any disquieting figures revealed by the monitor shall need to result in the formulation of policy designed to rectify the situation. Arrange for the development of a young people's participation monitor and incorporate this in the youth monitor. Stimulate local level monitors and action for children's rights

Recommendation 27 from the UN Committee on the Rights of the Child

Cooperation with the field (Article 45 of the CRC)

The Dutch authorities must consistently seek cooperation with the field in implementing the Convention, including in the area of policy-making.

Development

The Dutch Government holds six-monthly consultations at officer-level with the Dutch NGO Coalition for Children's Rights, a coalition of children's organizations. The Ministry of Social Affairs and Employment, Ministry of Foreign Affairs, Ministry of Education, Culture and Science, Ministry of Health, Welfare and Sports and the Ministry of Justice take part in these consultations. To date the discussions have concentrated exclusively on finances, the Dutch NGO Coalition for Children's Rights work programme, and the reports to the UN Committee on the Rights of the Child. The consultations are not of the nature of discussions on the content of rights of the child themes.

The Dutch NGO Coalition for Children's Rights' recommendation to the Dutch Government Arrange for consultations with civil society which discuss the content of the rights of the child in the Netherlands. Involve the field in policy development. Maintain the dialogue with society. Valuable initiatives such as the *Nationaal Jeugddebat* ('National Youth Debate') and the *Kindertop 2007* ('Children's Top 2007') should be continued.

Recommendation 29 from the UN Committee on the Rights of the Child

Provision of information about the rights of the child (Article 42 of the CRC)

The Dutch Government should ensure that the principles and provision of the Convention are widely known. The Dutch Government should undertake a systematic education and training programme for children, parents and all professional groups working for and with children, including judges, lawyers, law enforcement officials, public prosecutors, teachers, health-care personnel and social workers.

Development

The Dutch Government leaves the provision of information on and training in the rights of the child to the field (i.e. the Dutch NGO Coalition for Children's Rights). The Dutch NGO Coalition for Children's Rights is required to submit an annual work programme to the Government specifying its activities in the provision of information and training. This work programme is, alongside a substantial contribution from the Dutch NGO Coalition for Children's Rights' partner organizations, largely funded by the Ministry of Health, Welfare and Sports and the Ministry of Justice. The budget allocated to the Dutch NGO Coalition for Children's Rights is reduced every year: in 2006 the Dutch NGO Coalition for Children's Rights was compelled to carry out all the provision of information and training activities with an amount of 145,000 euros. Eventhough a useful secondary school education activity is undertaken, its scope is limited, A structural approach to child rights education is lacking. The rights of the child is not a compulsory component of any of the vocational courses for professionals who will work with children. For example, endeavours to include the rights of the child in the curriculum of courses for primary school teachers have become bogged down due to unwillingness and incomprehension on the part of the teacher training colleges and a lack of management by the Dutch Government.

The Dutch NGO Coalition for Children's Rights' recommendation to the Dutch Government
Take child rights education more seriously and make funds available for the provision of information about the rights of the child during vocational courses for professionals who will work with and for children, i.e. judges, teachers, youth-care workers, youth workers, health-care workers, social workers, etc.

Recommendation 31 from the UN Committee on the Rights of the Child

Combating discrimination (Article 2 of the CRC)

The Dutch authorities must combat discrimination. Their policy must pay particular attention to eliminating negative stereotyping of refugee and asylum-seeking children and address the root causes of de facto segregation in schools and localities.

Development

Prohibition on headscarves

During the past years there have been discussions as to whether wearing headscarves should be permitted at schools and the need for other clothing instructions for schools, discussions which arose after a number of schools had prohibited headscarves. The Equal Treatment Commission has given rulings in a number of cases. The Government drew up *Leidraad kleding op scholen* ('Guidelines for clothing at schools') in 2003, which state the prohibition of clothing prescribed by religion is in conflict with equal treatment legislation.

Black schools

Black schools have now been in existence for many years in the Netherlands; these schools result from spatial segregation in the Netherlands. The children attending black schools are primarily children from ethnic minorities. Black schools are associated with language arrears, behavioural problems and delinquency. Although the Dutch authorities equip black schools with additional teachers and teaching material this does not dissuade many indigenous (Dutch) parents from seeking a white school in their neighbourhood, and in some instances parents are willing to have their children travel considerable distances; other parents often opt for special education. The authorities endeavour to prevent this 'white flight' by compelling parents to place their children at a school within their postal code area. Researchers are not convinced that black schools by very definition offer lower-quality education.

More information about discrimination against refugee and asylum seeking children and children without documents is given in the Section on the rights of the child in aliens policy.

Recommendation 32 from the UN Committee on the Rights of the Child

Information on combating racism

The Dutch Government must include information about the measures that have been implemented to combat racism and discrimination in its next report to the UN Committee on the Rights of the Child.

Development

The Dutch Government's third periodic report includes an overview of campaigns that have been set up to combat discrimination, racism and radicalization.

Recommendation 34 from the UN Committee on the Rights of the Child

Euthanasia (Article 6 of the CRC)

The Dutch Government must maintain stringent supervision of the legislation relating to the termination of life on request, in particular in connection with newborn infants with severe abnormalities.

Development

Relating to the termination of life on request of fetuses and newborn children with severe abnormalities:

A Committee of Experts set up in 2006 shall advise the Public Prosecutions Department on the potential for the application of criminal law on the termination of life of neonatal children and the termination of pregnancies too late in the pregnancy. The decision as to prosecute will lie with the Public Prosecutions Department. In the event of the termination of life on request the public prosecutor shall be bound by the assessment of the review committee, which then has the last

say.

Recommendation 36 from the UN Committee on the Rights of the Child

Young people's participation (Article 12 of the CRC)

The Dutch Government needs to strengthen its support of the National Youth Council and youth organizations, and intensify its support of organizations of young people of foreign origin and integrate them into networks of dialogue and participation.

More information about this subject is given in the Section on participation.

Recommendation 40 from the UN Committee on the Rights of the Child

Youth care: waiting lists and funding (Article 18 of the CRC)

The Dutch Government should carry out an evaluation of the services available to parents to assist them in their child-rearing responsibilities in order to determine the cause of waiting lists in the Netherlands and assess the quality of the services provided. The Government should increase the funding of childcare facilities and services and support parental education programmes.

More information about this subject is given in the Section on youth care.

Recommendation 42 from the UN Committee on the Rights of the Child

Alternative care (Article 20 of the CRC)

The Dutch Government should expand alternative care by measures such as funding foster care (financial assistance for foster care families).

More information about this subject is given in the Section on youth care.

Recommendation 44 from the UN Committee on the Rights of the Child

Youth care: Child mistreatment (Article 19 of the CRC)

The Dutch Government must ensure that there is a clearly defined policy on child abuse. The Youth Care Act must conform to the provisions and principles of the Convention on the Rights of the Child.

More information about this subject is given in the Section on child mistreatment.

Recommendation 46 from the UN Committee on the Rights of the Child

Disabled children (Article 23 of the CRC)

The Dutch Government must strengthen its efforts to integrate children with disabilities into mainstream education and everyday life by taking all necessary measures to eliminate waiting lists for services, etc., for children with disabilities and by undertaking awareness-raising campaigns to promote their integration.

Development

Social attitudes constitute a major obstacle to the integration of children with a disability in society; people with a disability are often confronted by incomprehension, unfavourable responses and prejudices. During the past years a number of TV programmes have endeavoured to improve the image of people with a disability.

The intention of the *Taskforce Handicap en Samenleving* ('Handicap and society task force'), set up in 2004, is to enable people with a disability to take part in society. The task force organizes activities designed to make clear to society that people with a handicap are still confronted with barriers in their endeavours to take part in society. The ultimate objective of the task force is to ensure that society is aware that everyone has the same rights, inclusive of people with a disability.

More information about children with a disability and youth care is given in the Section on youth care.

Recommendation 48 from the UN Committee on the Rights of the Child

Vaccination (Article 24 of the CRC)

The Dutch Government shall, in cooperation with parents and religious leaders, take all the

necessary measures to ensure universal vaccination of children. The Dutch Government must take all the necessary measures to reduce mother-to-child transfer of HIV/AIDS.

Development

Vaccinations

Members of protestant groups reject vaccination since this is not compatible with their religion. Followers of anthroposophy reject vaccination for specific child diseases since in their view children who come through these, in their opinion less hazardous diseases, benefit in their development. The homeopathic sector does not issue unequivocal vaccination recommendations, although recommendations can be given not to give all – or any – vaccinations. During the past years other groups have also exhibited increasing resistance to vaccinations, and organizations have been set up by critical and concerned parents (*Nederlandse Vereniging Kritisch Prikken* ['Dutch Association for Conscientious Vaccination'] and *Stichting Vaccinatieschade* ['Vaccine Injury Foundation']). These organizations wish for improved information about diseases and the risks associated with vaccinations.

The Dutch vaccination rate has increased over the past years to the current level of 95%. The National Institute of Public Health and Environmental Hygiene provides information about the national vaccination programme which also discusses the arguments raised by parents who do not wish their children to be vaccinated.

HIV/AIDS

According to figures from the National Institute of Public Health and Environmental Hygiene the number of cases of HIV/AIDS would appear to be stabilizing.

Recommendation 50 from the UN Committee on the Rights of the Child

Health of adolescents (Article 24 of the CRC)

The Dutch Government must ensure that adequate mental health services are available for adults. The Dutch Government must take all necessary measures to prevent drug and alcohol abuse, and ensure that there are sufficient rehabilitation services specifically for children and adolescents. The Dutch Government must strengthen sex education at schools and intensify reproductive health care.

Recommendation 52 from the UN Committee on the Rights of the Child

Dealing with truancy and human rights education (Article 28 of the CRC)

The Dutch Government should expedite efforts to address non-attendance and the dropping out of school. The Dutch Government should also ensure that affordable and quality early education is available for all children.

The Dutch Government must also ensure that human rights education is included in the school curriculum.

More information about this subject is given in the Section on education.

Recommendation 54 from the UN Committee on the Rights of the Child

Refugee and asylum-seeking children (Article 22 of the CRC)

The Dutch Government should review the Aliens Act of 2001 and its application to ensure full conformity with international standards. The Dutch Government should change its definition of unaccompanied minors seeking asylum to as to bring it into line with international standards. The Dutch Government must ensure that the determination of the refugee status of minors conforms to international standards, and consequently reconsider the 48-hour accelerated procedure. The detention of children whose applications for refugee status have been rejected may be used only as a measure of last resort. They must receive adequate education and housing.

More information about this subject is given in the Section on children governed by aliens law.

Recommendation 57 from the UN Committee on the Rights of the Child

Sexual exploitation (Article 34 of the CRC)

The Dutch Government must develop a National Plan of Action against commercial sexual exploitation. The legislation must be amended to eliminate the complaint requirement and

double criminality requirement for the prosecution of sexual offences against children. The capacity of the police to investigate complaints of trafficking must be increased. Victims of trafficking and prostitution must have access to appropriate programmes and services.

More information about this subject is given in the Section on the sexual exploitation of children.

Recommendation 59 from the UN Committee on the Rights of the Child

Juvenile criminal law (articles 37, 40 of the CRC)

The Dutch Government shall ensure for the full implementation of international juvenile justice standards. The legislation must be amended such that life imprisonment cannot be imposed on anyone between the age of 16 and 18. The detention of juvenile offenders may be used only as a measure of last resort. The Dutch Government must avoid the detention of juvenile offenders together with children institutionalized for behavioural problems.

More information about this subject is given in the Section on juvenile criminal law.

Recommendation 61 from the UN Committee on the Rights of the Child

Ratification of the Optional Protocols

The Dutch Government should expedite the ratification of the two Optional Protocols to the Convention.

Development

The Dutch Government signed the Optional Protocol to the Convention of the Rights of the Child on the sale of children, child prostitution and child pornography on 7 September 2000, and the Protocol came into force in the Netherlands on 23 August 2005.

The Optional Protocol on the involvement of children in armed conflict was signed on 7 September 2000, but has not yet been ratified.

The Dutch NGO Coalition for Children's Rights' recommendation to the Dutch Government Ratify the Optional Protocol on the involvement of children in armed conflict as quickly as possible, with the note that voluntary enlistment is permitted only after attaining the age of eighteen.

Recommendation 62 from the UN Committee on the Rights of the Child

Dissemination of documents

The Dutch Government must make the second period report and the written replies submitted by the State Party available to the public.

Development

A Dutch-language translation of the recommendations from the UN Committee on the Rights of the Child has been commissioned and published on the Internet (on sites including www.kinderrechten.nl). The recommendations were discussed briefly with the Dutch NGO Coalition for Children's Rights during a meeting. There has been no parliamentary debate on the recommendations.

The Dutch NGO Coalition for Children's Rights' recommendation to the Dutch Government In furtherance of the reports organize public meetings for discussions on the implementation of the CRC in the Netherlands.

12 Conclusions

As indicated in earlier NGO reports, the Netherlands is not a bad country to grow up in. This is true for most children in the Netherlands. However, some children do not find growing up in the Netherlands easy, and their rights are an issue. These groups of children are discussed in this report. Although Netherlands is a frontrunner internationally for the advancement of human rights, this commitment is not always translated in domestic action to bring laws, policies and practices in line with the CRC.

12.1 Implementation of the UN Convention on the Rights of the Child

The UN Convention on the Rights of the Child (CRC) came into force in the Netherlands in 1995. The public information campaign about the Convention held in 1996 has not received a follow-up. Civil-society organizations, in particular the Dutch NGO Coalition for Children's Rights, are left to provide information about the rights of the child to children, parents and professionals who work with children. This provision of information is in part based on funding from the Dutch Government.

In spite of persistent urging by the UN Committee on the Rights of the Child and various NGOs, the Netherlands still has not appointed a Children's ombudsman.

A Minister for Youth and Family Affairs who took office in 2007 will coordinate Dutch youth policy. It is expected that the (virtual) portfolio Ministry of Youth and Family Affairs will result in the Dutch Government's increased attention to the Convention. However, the Minister has a shared responsibility for a number of policy areas, such as childcare and juvenile criminal law. It is unclear how this shared responsibility will be interpreted in financial terms with respect to the Ministry's budget.

Six-monthly consultations with the Government's interdepartmental children working party and the Dutch NGO Coalition for Children's Rights have taken place since 2000. To date these discussions have concentrated exclusively on the Dutch NGO Coalition for Children's Rights' work programme and the opportunities to receive government funding for the programme. No discussions are held on the content of child rights issues. Attendance is at mid level officer level.

The Dutch NGO Coalition for Children's Rights is concerned about decentralization. The national authorities' responsibility for a number of subjects and themes of the CRC, such as play areas, has been decentralized to the provinces and municipalities. The Government no longer has control of decentralized issues, even though the Government entered into international obligations with respect to those issues on signing the CRC.

12.2 Youth care

At least 150,000 children in the Netherlands are in need of some form of youth care. 26,000 professionals work in the youth care sector,

During the past years the theme of youth care was the development, entry into force and effect of the Youth Care Act entered into operation on 1 January 2005. The Act arranges access to youth care and integrates the right to youth care.

However, the Dutch NGO Coalition for Children's Rights is concerned about the fact that the right to youth care cannot be guaranteed due to issues such as the waiting lists at the Youth Care Offices and the high caseload of the family guardians. In addition, the Dutch NGO Coalition for Children's Rights is concerned about the limited number of places in foster care, the situation of extremely vulnerable children in youth care, the consequences of decentralization, and the lack of legal assistance and participation.

Above all, the Dutch NGO Coalition for Children's Rights emphatically requests the Dutch Government to base youth care on the Convention on the Rights of the Child and to recognize the right to youth care as a fundamental right.

12.3 Juvenile criminal law

Juvenile delinquency in the Netherlands is dealt with more severely than in the past; the policy is now focused more on 'tit for tat', i.e. rapid and, on occasion, harsh disciplinary action. The number of young people in detention is continually increasing.

The Dutch NGO Coalition for Children's Rights is concerned about the fact that the pedagogic nature of juvenile criminal law is increasingly being pushed into the background.

This sector also has long waiting lists, in this instance for a treatment place in the judicial institutions for juvenile persons. The Dutch NGO Coalition for Children's Rights is concerned about the deployment and effectiveness of the behavioural programmes offered in the closed institutions; these do not comply with the international criteria. The re-offence figures for young detainees are alarmingly high, a situation which is in part due to the lack of resocialization programmes and the minimal after-care. Parents and lawyers are still not granted the right to attend the first phase of police interrogation. The collection of DNA from minors is increasingly frequent. This is contrary to the pedagogic nature of juvenile criminal law. There is a lack of figures offering an appropriate insight. The Dutch NGO Coalition for Children's Rights has formulated recommendations about these and other issues.

12.4 Child abuse

A recently published study has revealed that many more children in the Netherlands are abused than had previously been supposed. The former estimate of 50,000 to 80,000 cases of child abuse per annum should now be replaced by a minimum of 106,000/160,000 cases of child abuse per annum.

Although child abuse is generally recognized as a serious social problem there was no plan of action for child abuse. Currently, such a plan exists, based on a NGO model of coordination between support services. Implementation of the plan appears to be undefined and slow. A 'prohibition on the use of violence in child-rearing' clause was incorporated in the Netherlands Civil Code in 2007.

In addition to the waiting lists of the *Advies en Meldpunten Kindermishandeling* ('Advice and Reporting Centres for Child Abuse') and the *Bureaus Jeugdzorg* ('Youth Care Offices') there is a lack of a national basic package focused on preventing and combating child abuse. Child abuse is insufficiently identified, recognized and dealt with by professionals; there is no obligation to report child abuse, and no obligation to intervene. Care relating to child abuse is characterized by too much bureaucracy, a lack of collaboration, and ad-hoc measures. The Dutch NGO Coalition for Children's Rights calls on the Dutch Government to take measures such as repeat public information campaigns about child abuse and to devote attention to vulnerable children who are at greater risk of becoming victims of child abuse.

12.5 Children in development cooperation

The Convention implies that countries such as the Netherlands – which are in a position to help other countries in the implementation of the Convention by means of development aid, the provision of knowledge, information or technical support, or by other means – are also expected to make every effort to do so. The implications of this include the need for the target for international development assistance of 0.7 per cent of gross domestic product to be met, for combating poverty to be assigned a high priority, and for the recipient states of the international aid and assistance to allocate a substantive part of that aid specifically to children.

During the past four years the Dutch Government has indicated its wish to 'mainstream' the children and young people target group in its poverty policy. Unfortunately, the Dutch Government lacks a viewpoint on children and young people in combating poverty.

In view of the relationship between no or poor education and the growing unemployment in most developing countries the Netherlands needs to place much greater emphasis on high-quality education and on the link with employment.

The Dutch Government should ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and implement the conclusions from the UN report on children and violence as quickly as possible.

12.6 Participation

Young people's participation is still in its infancy in the Netherlands. The Dutch Government would appear to have forgotten the Convention's P of participation, since the Government's attention is focused almost exclusively on the 15% of young people who constitute what is referred to as 'the group of young people at risk' and ignores all other young people in the Netherlands.

The financial support given to youth organizations is being phased out, and the young people's participation policy is increasingly – and without obligation – being devolved to the municipalities. These municipalities are not issued guidelines for municipal policy.

The Dutch NGO Coalition for Children's Rights advocates measures such as the formulation of a National Plan of Action for Young People's Participation which specifies a long-term perception of positive youth policy to counter the current ad-hoc nature of the youth policy.

12.7 Children in poverty

Poverty is a relative concept, since it is linked to the general level of prosperity of a given society and the associated level of welfare. Anyone in today's Western society without a refrigerator, telephone or holidays for financial reasons can be qualified as poor. Poverty is not synonymous with an income below minimum level. Severe and long-term poverty results in isolation and exclusion that extend beyond solely the economic consequences, and the side-effect of life in poverty – social exclusion – is particularly felt by children.

The Dutch NGO Coalition for Children's Rights is concerned about the growing group of children in the Netherlands who live in poverty. In 2005 at least 12.5% of all children below the age of eighteen in the Netherlands live in a poor family, equivalent to 430,000 children living on or below the poverty line. Children living in poverty have less ready access to facilities such as sport, health care and school. This group of children is at greater risk of becoming victims of child abuse, and also comes into more frequent contact with child protection agencies.

The Dutch NGO Coalition for Children's Rights advocates measures such as the involvement of children in the discussions on combating poverty.

12.8 Children and migration law

During the past few years the additional protection refugees and asylum seekers' children should receive pursuant to the Convention of the Rights of the Child came under great pressure in the Netherlands. The detention of children on the grounds of their residency status, the literal eviction of families on to the street once their application for a residence permit had been rejected, the intimidating police actions in collecting children in the middle of the night or from their class for detention for the purpose of deportation were illustrative of the Netherlands' harsh aliens policy. Children going through the asylum procedure are heard by people who have not received special training in interviewing children. Minors should no longer be placed in detention for the purpose of deportation, but should be placed in what are referred to as 'shelter locations'.

In addition to the children of asylum seekers and refugees, the realization of the rights of the child is also under pressure with a further group of aliens' children, namely those children without a residence permit and do not stay lawfully in the country – 'illegal aliens', 'aliens without documentation'.

Many violations of the rights of the child are due to the violation of the non-discrimination principle (Article 2 of the CRC). The Dutch Government is of the opinion that some groups of

children, such as children which do not stay lawfully in the country, do not fall under the protection of the Convention of the Rights of the Child and consequently have no right to facilities.

The Dutch NGO Coalition for Children's Rights advocates measure such as ensuring that children who have become rooted in Dutch society have a right to a residence permit.

12.9 Leisure time and space

During the past years leisure time for children and young people has acquired a higher place on the political and policy agenda.

Children and young people are largely dependent on their residential surroundings during their leisure time, and they are intensive users of public space. However, great pressure is being imposed on the quality of the public areas. This pressure is due to the greatly increased land prices, increases in scale, the growth in motorized traffic, and the emergence of the compact city. Not infrequently the interests of young people lose out to other interests.

The Dutch NGO Coalition for Children's Rights is concerned about the fact that a continually increasing amount of children's leisure time is becoming institutionalized. Children are kept occupied from 09.00 to 17.00; they leave school and go directly to childcare centres. Facilities are increasingly poorly accessible to children (in independence). The regulations governing play and leisure time are continually increasing.

The Dutch NGO Coalition for Children's Rights calls on the Government to arrange for structural funding of basic leisure-time facilities for children and young people in the neighbourhood.

12.10 Education

Education is currently a subject of a great deal of discussion in the Netherlands, both amongst politicians and amongst educational professionals. Two problems are particularly striking: Firstly, the debate on primary schools, in particular, is focused on the contrast between white and black schools. Secondly, and not entirely unrelated to the first problem, is efficiency of secondary education is low.

The Dutch NGO Coalition for Children's Rights concerned about the fact in the Netherlands the right of the child to education has not been fully realized for three groups of children, i.e. 'illegal' children, children with behavioural problems, and highly-gifted children.

Safety at schools is becoming increasingly open to discussion. These feelings of insecurity are not caused by the teachers, but by the pupils: (the threat of) physical violence, theft, bullying, the possession of weapons, racism, right-wing extremism, discrimination against homosexuals, Internet insults, sexual intimidation and exploitation and vandalism during excursions and school trips.

The Dutch NGO Coalition for Children's Rights calls on the Dutch Government to guarantee the right to education for *all* children in the Netherlands. More attention needs to be given to safety at schools, whereby methods such as restorative justice and peer group mediation should be implemented. Education in human rights should be a compulsory element of school curricula.

1 Prof.dr.F.Lamers-Winkelman, Prof.dr.N.W. Slot (et al.); Scholieren over mishandeling, Resultaten van een landelijk onderzoek naar de omvang van kindermishandeling onder leerlingen van het voortgezet onderwijs; Vrije Universiteit Amsterdam (Faculteit der Psychologie en Pedagogiek) / PI Research Amsterdam, 2007.

M.H. van IJzendoorn, P. Prinzie (et al.); Kindermishandeling in Nederland Anno 2005: De nationale Prevalentiestudie Mishandeling van Kinderen en Jeugdigen (NPM-2005), Universiteit Leiden / Algemene en Gezinspedagogiek – Datatheorie, Leiden, 2007.

2 This can, for example, be in continuation of the article in the Act that it is an offence to leave someone alone in a helpless condition by the person who has been entrusted with the requisite care.

3 The Dutch abbreviation of 'ama' for unaccompanied minor asylum seekers in policy documents and case law has gradually changed into unaccompanied minor alien ('amv'). However, society makes most use of the word 'ama'.

4 House of Representatives, 2003-2004, 19 637, No. 844

5 House of Representatives, 2003-2004, 19 637, No. 847 8

6 See the report (Geen) eerbied voor gezinsleven VluchtelingenWerk Nederland, november 2006, en C. van Os, Versterking van het recht op gezinsleven in: Tijdschrift voor de Rechten van het Kind, Vol. 17, No. 1, March 2007, p 2-7.

7 E.g. in LJN: AZ9524, ABRS 15 February 2007, 200604499/1.

8 "Since the person involved is a minor with Dutch nationality the answer to the question should be viewed (...) in the light of articles 3 (...) and 27 (...) of the CRC", in: JN:AZ8596, Central Court of Appeal, 05/7366 WWB, 13 February 2007.

9 See paragraph 12 of General Comment No. 6.

10 ABRS 13 September 2006 , 20050732/1, AB 2005, 429.

11 LJN: AZ9524, ABRS 15 February 2007, 200604499/1.

12 On lower courts do not agree with this. However, the Council of State has not yet rejected this reasoning. See, for example, The Court of the Hague, zp Haarlem, 2 March 2007, AWB 06/37440 and AWB 06 / 37439.

13 M. Kalverboer & E. Zijlstra, Kinderen uit asielzoekersgezinnen en = het recht op ontwikkeling. Het belang van het kind in het

vreemdelingenrecht. Amsterdam: SWP 2006.

14 In very rare cases it is possible for a minor to get a residence permit after it has not been possible to deport the minor within three years after his asylum procedure has ended and before he is 18 while he cooperated to arrange his deportation fully. B14/3.3.3.3 Vreemdelingenbesluit 2000.

15 Parliamentary Documents II 2007/08, aanhangsel. Nr 1455. p. 3115

16 http://www.inspectiesanctietoepassing.nl/Images/ISt_TO_Inspectierapport%20vastgesteld%20Ouders_IR_TO_tcm49-85248.pdf

17 Council of Europe Rapporteur Zapfl-Helbling, Policy of return for failed asylum seekers in the Netherlands (November 2005).

18 Parliamentary Meeting, Policy of return for failed asylum seekers in the Netherlands, Resolution 1483 (2006).

19 Concluding observations of the Committee on the Rights of the Child on the Netherlands, CRC/C/15/add 227, 30 January 2004, paragraph 53.

20 Parliamentary documents II 2006/07, 19 637, No. 2.

21 <http://www.defenceforchildren.nl/ariadne/loader.php/dci/nieuws/00088/>

22 The Netherlands: Discrimination in the Name of Integration. Migrants' Rights under the Integration Abroad Act. Human Rights Watch. May 2008.

13 "The plaintiffs have argued that the deprivation of their liberty began at the time of the police raid at the asylum-seekers centre in Leiden in the early hours of the morning. The raid was carried out by twelve police officers, of whom four were armed and masked. The plaintiff fled at the time of the raid. A gun was pointed at the plaintiff as he fled, and this was seen by one or more children. The female plaintiff and her children were not allowed to dress themselves, and were not permitted to take any personal property with them. They were given nothing to eat or drink during the 7-hour journey to Germany. D, at the time a five-month-old baby, became unwell during the journey to Germany. The plaintiffs claim that they have become seriously traumatized as a result of the deportation. The court notes that the defendant has not disputed the procedure during the deportation.' Description of a deportation in: The Court of The Hague, zp Amsterdam, 2 February 2007, Court hearing applications for interim measures , AWB 03/22809; AWB 06/20444, AWB 06/20446.

24 Article 10, paragraph 1, of the Aliens Act stipulates that aliens without a legal residence status cannot make use of facilities. The second paragraph of the Article states that departures from paragraph 1 are possible for example, for education and the necessary medical care.

25 Tammy Bean, *Assessing the psychological distress and mental healthcare needs of unaccompanied refugee minors in the Netherlands*, dissertation Leiden University 2006.

26 Parliamentary Documents 2007/08, 31 249, nr 3.

27 LJN: AY 9940, Central Court of Appeal, 06/3850, 3851 WWB.

28 Defence for Children International, Unicef, NJCM and LOS have lodged a complaint about the violation of the right to housing against children who unlawfully stay in the Netherlands at the European Committee of Social Rights. See:

http://www.coe.int/t/e/human_rights/esc/4_collective_complaints/list_of_collective_complaints/CC47CaseDoc1_en.pdf

29 In the international Convention on Migrant Workers this right to education, explicitly including children without a residence permit, is provided for in Article 30.

30 WODC Report. *Terugkeer en MOB bij alleenstaande Minderjarige vreemdelingen. Landelijk beleid en lokale praktijk*. 2006

31 Brief van Staatssecretaris Albayrak in antwoord op kamervragen van Arib en Spekman (PvdA), 26 maart 2008, ingezonden 7 februari 2887, kenmerk 2070810850.

32 CRC/GC/2005/6, paragraph 19.

33 CRC/GC/2005/6, paragraph 31.

34 More than half of large families with four or more children have difficulty in making ends meet. This is apparent from the Nibud 'Grote Gezinnen Onderzoek' study. (07-02-2003).

35 Third periodic report by the Netherlands on the implementation of the UN Convention on the Rights of the Child, pp. 96-82.

36 *Operatie Jong* ('Operation Young') was launched by seven ministries in 2004 with the objective of improving the cohesion of youth

policy. A joint agenda was formulated that was used until 2007. The Government also appointed a Commissioner for Youth Policy to advise the ministries. *Operatie Jong* was concluded on 1 January 2007.

37 The Dutch NGO Coalition for Children's Rights (2006) 10-point plan for the rights of the child policy and youth policy.

<http://www.kinderrechten.nl/site/pages/volwassenen/nieuws/10puntenflyerv2.pdf>

38 Social and Cultural Planning Board (2005), *De sociale staat van Nederland 2005*. The Hague, p 205. According to the SCP both policy proposals and implemented policies exhibit an emphatic focus on civil society and the participation of the public. "Nevertheless, volunteer organizations are confronted with a wide range of cutbacks in subsidies. The new *Wet maatschappelijke ondersteuning* ('Social Support Act', WMO) assigns municipalities the duty of encouraging volunteer work. However, it a moot point whether the municipalities possess the capacity and resources required to fulfil this duty. An earlier report argued that these cutbacks in subsidies [...] could cause problems for a wide range of organizations."

39 LJN: AR8112, Court of The Hague , 2200248704

40 House of Representatives, 2005-2006, Parliamentary Document 30644 No. 2, *Wijziging van de Wet op de jeugdzorg met betrekking tot de jeugdzorg waarop aanspraak bestaat ingevolge de wet in gesloten setting (gesloten jeugdzorg)*.

41 House of Representatives, 2005-2006, Parliamentary Document 30644 No. 2, *Wijziging van de Wet op de jeugdzorg met betrekking tot de jeugdzorg waarop aanspraak bestaat ingevolge de wet in gesloten setting (gesloten jeugdzorg)*.

42 These primarily relate to programmes brought in from the USA to restore discipline in young people. The Glen Mills school accepts individual young people from the age of fourteen and is focused on boys of average intelligence who have committed civil-law misdemeanours (*OTS met uithuisplaatsing*, ['supervision order with care']). Den Engh is a judicial institution for juvenile persons which uses a group method focused on mentally-retarded young people and frequent offenders.

43 *Strafrechtelijke recidive van jongeren uit justitiële jeugdinrichtingen; uitstroomperiode 1997-2003*, Wartna, B.S.J., Kalidien, S.N., Tollenaar, N., Essers, A.A.M.. The Hague, WODC, 2006

44 Parliamentary Documents II 2004/05, 30 023, No. 1, p. 3.

45 For example, the young person's expression of regret to the victim. Halt is particularly effective with first offenders and young people who commit offences in groups and are vulnerable to peer pressure.

46 See also NJCM standpoint of 2006, which was published in in the NJCM-bulletin No. 4, June 2007.

47 Case law:

Court of Middelburg 29 June 2005; Nieuwsbrief Strafrecht 2005, 313

Court of Groningen 25 January 2006; LJN AV0355

Court of Maastricht 7 February 2006; Nieuwsbrief Strafrecht 2006, 230

Court of Amsterdam 14 February 2006; NJFS 2006, 86

Court of Amsterdam 14 February 2006; LJN AV1668

Court of Almelo 8 March 2006; Nieuwsbrief Strafrecht 2006, 214

Court of Middelburg 15 March 2006; Nieuwsbrief Strafrecht 2006, 233

Court of Arnhem 11 April 2006; Nieuwsbrief Strafrecht 2006, 221

Court of Arnhem 9 May 2006; public prosecutor's office no. 05/740069-05

48 See also Court of Amsterdam, 1 June 2006 (Nieuwsbrief Strafrecht 2006, 298).

49 Rechten in justitiële jeugdinrichtingen: evaluatie Beginselenwet justitiële jeugdinrichtingen, Bruning, M.R., Liefwaard, T. Volf, L.M.Z. WODC, Vrije Universiteit, Amsterdams Centrum voor Kinderstudies, 2004

50 Committee on the Rights of the Child, 'General Measures of Implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para.6), General Comment No. 5 (2003), UN Doc. CRC/GC/2003/5, 27 November 2003, p. 14 paragraph. 60.

51 Ditto, p. 14 paragraph 61.

52 Chen and Ravallion 2004.

53 See, for example, Ministry of Foreign Affairs Information Service, *Beleid in de Kinderschoenen: Beleidsnotitie over Kinderen in Ontwikkelingslanden*, The Hague, 1994.

54 Joint Evaluation of External Support to Basic Education in Developing Countries, Final Report 2003

55 Ditto

56 A/RES/61/146, 23 January 2007