

CHILDREN'S RIGHTS IN THE NETHERLANDS

4th NGO Report of the Dutch NGO Coalition
for Children's Rights



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CHILDREN'S RIGHTS IN THE NETHERLANDS

4th NGO Report by the NGO Coalition for Children's Rights
to the UN Committee on the Rights of the Child

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FOREWORD

The Netherlands ratified the UN Convention on the Rights of the Child (hereinafter: UN CRC) in 1995, and was bound by the provisions of the treaty from that moment. Another obligation that follows ratification is the obligation for the government to submit a report to the UN Committee on the Rights of the Child (hereinafter: UN Committee) every five years on the children's rights situation in the country.

Several months before the Netherlands government meets with the UN Committee about the state report, non-governmental organizations (NGOs) are given the chance to express their opinion to the UN Committee on what can be improved in the Kingdom of the Netherlands. Prior to this meeting, a report must be submitted with information and recommendations for a better implementation of and compliance with the UN CRC in the Netherlands: the NGO report.

This is the fourth NGO report submitted to the UN Committee. This NGO report is an updated version of the report that was made in 2012. The report covers the period from January 2008 through July 2014 and will be presented on behalf of the NGO Coalition for Children's Rights.

Due to the fact that this report is written by NGOs and civil society organisations from different parts of the Kingdom of the Netherlands, who are committed on a daily basis to children and children's rights, a clear picture is given of the children's rights situation in the Netherlands.

The NGO report is used by the UN Committee to make recommendations for improvements. When one reads this report, it becomes clear there is still a lot to improve. Although the Netherlands is a developed country where many children have a high standard of living, there are still children who are left behind. This report therefore concerns children in the Netherlands who are not doing well, or those whose situations are likely to worsen.

This NGO report is endorsed by over 60 civil society organisations. The NGO Coalition for Children's Rights is grateful to all authors and experts who have contributed to compiling this report.

Aloys van Rest,
Chair of the NGO Coalition for Children's Rights

PREFACE

This is the updated version of the 2012 NGO Report. The 2012 NGO Report and the update are subdivided into separate sections, similar to government reports. In this report, the NGO Coalition for Children's Rights discusses different subjects, highlights the current positive and negative developments and afterwards presents recommendations.

At the start of the process to compile this report, a broad consultation was held with approximately eighty children's rights organisations. In addition to this, the authors studied the most recent publications on the selected subjects. Finally, different experts were approached, who critically reviewed and commented the content of the text. As an appendix to the report, the recommendations adopted by the UN Committee to the Dutch government in 2009 are listed in subject. The NGO Coalition for Children's Rights hereby provides a concluding opinion on the extent to which the Dutch government has addressed each recommendation.

This updated version of the NGO report was sent to the UN Committee in August 2014, for the 'pre-session' to be held on September 24th, 2014. The update was also presented to the parliament and government in August 2014.

This 'pre-session' is a hearing at which all NGO's and other competent bodies that reported to the UN Committee will be granted the opportunity to provide additional information. Based on this hearing, a list of issues will be compiled. This list of issues is a list of additional questions the UN Committee has for the Dutch government, in order to prepare the hearing attended by a delegation of the Dutch government in May, 2015.

The NGO report refers to the Netherlands and will not comment on the recommendations by the UN Committee in 2009 which were made for the (at the time still existing) Netherlands Antilles and Aruba. However, information will be provided about the situation on the islands of Bonaire, St. Eustatius and Saba which, since October 10th, 2010, are special municipalities of the Netherlands.

In addition to this NGO report, NJR (National Youth Council), in collaboration with the NGO Coalition for Children's Rights, is working on a youth report in which children and youths express their views about possible improvements.

INTRODUCTION

The UN Committee on the Rights of the Child (hereinafter: the UN Committee) critically reviews the reporting countries. This view becomes more critical when a country has more resources at its disposal to implement the UN CRC (Article 4 CRC). In other words: the UN Committee on the Rights of the Child judges well developed countries like the Netherlands differently than a developing country. Generally the standard of living of children in The Netherlands is quite well. All basic provisions are available, and often more than that. However, not every child in the Netherlands has equal access to these provisions. Besides the UN CRC requires more than providing the basic provisions within a country.

Social and political developments

The updated NGO report 2014 from the NGO Coalition for Children's Rights is established in a country that has an Institute for Human Rights and a Children's Ombudsman. However, the Netherlands no longer has an appointed Minister for Youth and Family and the government continues to implement large-scale budgets cuts.

As from 2015 several changes on a larger scale will take place within the system of youth services. Because of a decentralisation, local governments will be responsible for providing youth care services.

No Minister for Youth and Family

The Netherlands appointed the first Ministry for Youth and Family in the period 2007-2010 with the first Minister André Rouvoet. The minister's policy was explicitly based on the UN Convention on the Rights of the Child, thereby confirming the authoritative importance of this convention as the principal guideline for youth policy. The NGO Coalition for Children's Rights strongly lobbied to retain a Minister for Youth and Family. Nevertheless, the previous government decided to abolish the Ministry for Youth and Family, and to allocate youth policy thematically to various other ministries. The current government has pursued this policy. The state secretary for Health, Welfare and Sport is currently the coordinating government official.

Less legal protection for vulnerable groups of children

The coalition agreements of September 2010 (Regeerakkoord VVD-CDA, 2010) and October 2012 (Regeerakkoord VVD-PvdA, 2012) express respect for international treaties and confirm the importance of protecting certain fundamental rights. However, they also explicitly state that the government will seek to find the limits to these fundamental rights and the European law, especially in finding possibilities to pursue a restrictive and selective immigration policy. When new national policy conflicts with international legal limits, the Netherlands will try to change the relevant treaties, guidelines or agreements, either through the European Union or in another way. It can be expected that this will reduce the protection of children from vulnerable groups, such as children without a residence permit (undocumented children).

Children's rights in foreign policy

Unlike in 2007, when the Minister of Foreign Affairs devoted extensive attention to promoting children's rights in Dutch foreign and international human rights policy, the explicit attention for children's rights has decreased since 2010, as a result of the reduction of the overall development budget. The government's priorities have shifted towards trade partnerships in combination with aid and investments. Following the cuts to the development cooperation budget, Dutch international aid has diminished. For example, the budget for education is significantly reduced and will even be reduced to zero. The NGO Coalition for Children's Rights considers it of great importance that children's rights once again become an explicit part of the Dutch foreign and international human rights policy. The cuts to the development cooperation budget are of great risk for, for example, educational programs and for maintaining the achievements of the past years.

Aruba, Curaçao, St. Maarten, Bonaire, St. Eustatius and Saba

Since October 10, 2010 the Kingdom of the Netherlands has been divided into four different countries. The Netherlands, Aruba, Curaçao and St. Maarten are independent countries within the Kingdom of the Netherlands. The islands Bonaire, St. Eustatius and Saba (hereinafter: BES-islands) are special municipalities of the Netherlands. The children's rights situation on the BES-islands barely complies with the UN Convention on the Rights of the Child. There is a lot of poverty, violence and there is an inadequate data registration system.

CHAPTER 1-8

1.1 GENERAL IMPLEMENTATION MEASURES

(Articles 4, 42 and 44 paragraph 6 CRC)

Introduction

The NGO Coalition for Children's Rights fears that because of cutbacks and decentralisation of certain government tasks, living up to the UN CRC is at stake in the Netherlands. There are also great concerns about the compliance with children's rights in the Caribbean Netherlands. However, the introduction of a Children's Ombudsman and an Institute for Human Rights is an important step to strengthen the monitoring of compliance with the UN CRC and other treaties.

The Children's Ombudsman

With the appointment of the Children's Ombudsman in February 2011, the Netherlands is in compliance with the repeated recommendation of the UN Committee on the Rights of the Child on this matter. The Children's Ombudsman is accommodated in the institution of the National Ombudsman and reports to the Dutch House of Representatives and the Senate (*Stb.* 2010, 716). His duties include the following:

- to advise the government and parliament on legislation and policy that are relevant to children's rights;
- to arrange public education and information about children's rights;
- to handle complaints, not just about government bodies but also about other organisations with relevant tasks in the field of youth (such as schools, child day care, youth care and hospitals);
- to investigate possible violations of children's rights in the Netherlands.

The Children's Ombudsman furthermore offers advice to children on how they can assert their rights, and enhances the awareness of the existence of children's rights in general.

A new human rights institute

The Dutch government has heeded the United Nations' call to establish a national human rights institute, in conformity with the criteria for such an institute as defined by the United Nations, known as the Paris Principles (*UN Doc A/RES/48/134*). This institute was founded in 2012 in the form of an Institute for Human Rights (*College voor de rechten van de mens*, hereinafter: the institute). This institute monitors whether the Netherlands complies with human and children's rights. The Dutch Equal Treatment Commission (*Commissie Gelijke Behandeling*) has been incorporated in the new institute. The institute has an advisory and informational function. Its competence to initiate legal proceedings with the civil judge will remain limited to matters of equal treatment. The NGO Coalition for Children's Rights regrets that this competence has not been expanded to all the fields in which the institute operates.

Treaties still to be ratified

The Netherlands has yet to ratify the following treaties:

- Optional Protocol to the International Convention on Economic, Social and Cultural Rights (*Trb.* 2010, 15);
- International Convention on the Rights of Persons with Disabilities and the Optional Protocol (*UN Doc A/RES/45/158*);
- International Convention on the Protection of Migrant Workers and their Families
- ILO Convention on the Protection of Domestic Workers (Domestic Workers Convention, 2010 No. 189);
- Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (*UN Doc A/C.3/66/L.66*);
- Convention of the Council of Europe on Preventing and Combating Violence against Women and Domestic Violence (*CETS* no. 2010, 2011).

These treaties and protocols offer (vulnerable) children (a minimum level of) protection. The current government is committed to ratifying several of these treaties soon (*Kamerstukken II* 2013/14, 33 826, nr. 1, bijlage Nationaal Actieplan Mensenrechten). The NGO Coalition for Children's Rights advises the Dutch government to ratify these treaties and protocols as soon as possible. On 14 July 2014, a draft law (*Kamerstukken II* 2013/14, 33 990, nr. 2) was filed by the Parliament to ratify the International Convention on the Rights of Persons with Disabilities (*Internationaal Verdrag inzake de Rechten van Personen met een Handicap*, Trb. 2007, 169). The draft law contains changes to the Act on Equal Treatment on the grounds of Disability or Chronical Illness (*Wet gelijke behandeling op grond van handicap of chronische ziekte*, Stb. 2003, 206) and the Elections Act (*Kieswet*, Stb. 1989, 423).

Recommendations

- Ratify the third Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure.
- Ratify all other human rights treaties and the associated Protocols.

Reservations to the United Nations Children's Rights Convention

The reservations made by the Dutch government regarding Articles 26, 37 sub c and 40 of the UN Convention on the Rights of the Child (hereinafter: UN CRC) are still in force, meaning the rights in these articles are not guaranteed. The rights at stake are the right of the child to social welfare, the prohibition to apply adult criminal law on children and the right of the child to legal assistance. Despite the recommendations of the UN Committee on the Rights of the Child, the Dutch government has decided not to withdraw these reservations (*Kamerstukken II* 2013/14, 26 150, nr. 134, bijlage Fourth Periodic Report of the Kingdom of the Netherlands concerning the Implementation of the International Convention on the Rights of the Child (October 2006 - December 2012).

Recommendation

- Withdraw the reservations to the UN CRC.

Cutbacks

The recommendation of the UN Committee on the Rights of the Child to withdraw the reservation to Article 26 CRC, providing for a children's own right to social welfare, has not been heeded by the Netherlands. In 2008 the government reported to the UN Committee on the Rights of the Child that the Netherlands has a comprehensive system of social insurances and provisions that guarantees all citizens a minimum income. The current government has to implement significant cutbacks in the coming years. These cutbacks will particularly affect families and children living on a minimum income. Chapter 3.3 of this report extensively reports on poverty in the Netherlands.

Recommendation

- Protect children against the effects of the financial crisis and against the consequences of the cutbacks.

Decentralisation

As from 2015, municipal authorities will be responsible for youth care, work and income, and the care for the chronically ill and elderly (*Stb.* 2014, 105). They are already fulfilling some of these tasks and will have more tasks assigned to them in 2015, which were previously the responsibility of the state. The NGO Coalition for Children's Rights is concerned about the monitoring of children's rights, now that all these responsibilities are decentralised to the local authorities. The new youth care system will go into effect in 2015 (*Stb.* 2014, 105). From then on, the entire youth

care system will be the responsibility of the local authorities. The municipalities are primarily focusing on this transition. The actual redesign of the system, also referred to as the transformation, is under pressure, as the transition needs to be completed under huge time pressure. The NGO Coalition for Children's Rights finds this worrying, as precisely the transformation could contribute to the implementation of the CRC. The decentralisation to municipal levels additionally raises much uncertainty as to how quality, professionalism and capacity in fulfilling all these tasks can be assured. Under the UN CRC, the state remains responsible for compliance with its provisions. How the state intends to fulfil this responsibility and to monitor the youth care system nation-wide remains unclear.

Data collection

Every year the government compiles the Youth Monitor: a summary of the life situation of young people between 0 and 25 years in the Netherlands, underpinned by figures, and reporting on the themes of youth and family, health and welfare, education, work, safety and justice (CBS, 2013). The Youth Monitor does not contain information on sexual exploitation and human trafficking. The Monitor does contain data on child maltreatment and youth care. In addition to information at the national level, the Monitor also offers information at the regional level. In addition, at the end of 2011 the report 'Regionaal beeld van de jeugd 2011' (*Regional portrait of youth 2011*) was published, describing the situation of youth in the Dutch municipalities (CBS, 2011). Nevertheless, the Dutch government does not have its figures entirely up to date, for instance with respect to child maltreatment, youth care, youth criminal law, 'alien children', sexual exploitation and human trafficking. NGOs sometimes have to appeal to administrative procedures on the grounds of the Act containing Regulation governing Public Access to Government Information (*Wet openbaarheid van bestuur*, Stb. 1978, 581) to obtain the most recent figures from the state.

Recommendation

- Monitor the data on all issues relevant to children's rights and make the (statistical) information available to NGOs and society.

Children's rights education

Various activities have been undertaken recently to promote education in human rights. The legislation for primary education stipulates that education is also directed at active citizenship and social integration. Schools are free to put this into practice as they see fit. In practice, many schools fulfil this task by teaching children about the democratic rule of law and how they can actively contribute to society. In its Human Rights Report of 2013, the Institute for Human Rights recommends mentioning human rights explicitly in the core objectives for primary and secondary education (College voor de Rechten van de Mens, 2014). The Ministry of Education, Culture and Science is considering this proposal, in which context the state secretary is working with the education sector in 2014 to examine a tightening of the core objectives regarding citizenship and making human rights a more explicit theme (*Kamerstukken II 2013/14*, 33 826, nr. 1, bijlage Nationaal Actieplan Mensenrechten).

Recommendation

- Make children's rights education a mandatory component of education.

Respect for children's rights in the Caribbean Netherlands

On October 10th, 2010 the Kingdom of the Netherlands was split up into four separate countries: the Netherlands, Aruba, Curaçao and St. Maarten. The islands of Aruba, Curaçao and Sint Maarten are – just like the Netherlands – independent countries in the Kingdom of the Netherlands. Primarily the governments of these (young) countries themselves are responsible to take good care of their children. The islands Bonaire, Sint Eustatius and Saba (also known as the BES-islands) are special municipalities

of the Netherlands. They are called the Caribbean Netherlands and have a separate status. Research into the living conditions of the more than five thousand children of the BES-islands shows that the situation does not comply with the standards set by the UN CRC. The three most important problems that children face are poverty, violence and lack of data registration (UNICEF Nederland, 2013).

Poverty

The BES-islands are subject to large-scale poverty. Parents, especially single mothers, often have multiple jobs. Even then it is very difficult for parents to provide for basic necessities, such as food, clothing, and rent. Life on the islands is expensive. Almost everything has to be imported, which raises the price of food. At the same time, salaries for workers are relatively low and not enough suitable and affordable places to live are available. Parents do not receive child support like in the European Netherlands. In extreme cases, there is not even enough money to buy (healthy) food or clothing, and children show up at school hungry. The result is that parents cannot raise their children according to an adequate standard of living.

Recommendation

- Guarantee financial support to parents, child care and a healthy living situation for children in the BES-islands.

Violence

Many children on the BES-islands are confronted with domestic violence or abuse. Violence at school is also a concern, in particular between teachers and students. Although in the past years many improvements have been made in dealing with juvenile delinquents, there is still a lot to improve. For example, a prohibition of corporal punishment is still missing in legislation in the Caribbean Netherlands. Also, just like in the European Netherlands, it is possible to apply adult criminal law on 16- and 17-year-olds. Furthermore, the possibility of a lifelong imprisonment still exists for minors in the BES-islands.

Recommendations

- Improve the support and care offered to children and parents on the BES-islands by investing in capacity and knowledge of social workers and care providers.
- Prohibit corporal punishment on the BES-islands.
- Prohibit lifelong imprisonment for minors on the BES-islands.

Data collection

No known effort has been made to collect and monitor data concerning areas that have an impact on children, such as health, upbringing, education and safety. It is therefore hard to see which approach to dealing with the existing problems works and which does not. Without data registration, it is hard to determine to what extent the problems of poverty and violence subsist, what the drop-out rates in schools are, or how many children live in poverty. Without adequate monitoring, it is impossible to create policies focused on improving the situation.

Recommendation

- Collect and monitor data on all issues pertinent to children's rights on the BES-islands and make the (statistical) information available to NGOs and society.

1.2 GENERAL PRINCIPLES

(Articles 2, 3, 6 and 12 CRC)

Introduction

The NGO Coalition of Children's Rights notes that, compared to 5 years ago, there is an increase in

knowledge on and the application of the UN CRC. However, progress can still be made, especially when it comes to the interpretation of the concept 'best interests of the child', eliminating discrimination of vulnerable groups of children and strengthening participation of children and youths.

The UN CRC in policy and justice

In recent years, the UN CRC has become more familiar. It is used more often as a starting point for the development of legislation and policy and in Dutch case law. However, there is still much progress to be made (De Graaf et al., 2012). The main concern is a lack of knowledge regarding the scope and significance of the UN CRC and on how to interpret the concept of 'the child's best interest' (Pulles, 2011). In its 2009 recommendations, the UN Committee on the Rights of the Child made several comments (recommendations 28 and 29) on the need for a better application of Article 3, paragraph 1 CRC (the best interests of the child) in relevant legislation and jurisprudence. In practice, the judiciary and the state have not managed to do so. There is insufficient knowledge on the UN CRC and the meaning of the concept of 'the best interests of the child'.

In a court case, all aspects of the 'best interests of the child' should be considered. Nevertheless, in practice judges appear to have trouble applying the concept of 'the best interests of the child'. Not only judges, but all professionals concerned should be aware, throughout the procedure, that the 'best interests of the child' should be a primary consideration. Even if there is willingness to do so, professionals often lack the knowledge and skills to use the tools that have been developed to this end. At present, the use of the Convention on the Rights of the Child by the judiciary in the Netherlands is still (too) inconsistent. Particularly where residence procedures are concerned, the child's interest is rarely considered (Reneman, 2011).

Recommendations

- Organise periodic public awareness campaigns on the UN CRC and the Optional Protocols, including the development of an easy-to-understand, child-friendly version of the relevant legal instruments in relevant languages.
- Arrange sufficient training of professionals in applying the UN CRC and the assessment tools developed to determine the 'best interests of the child'. Involve NGOs, the Children's Ombudsman and other relevant organisations in the development and implementation of these activities.

Non-discrimination

All children must be protected effectively against all forms of discrimination. This applies especially to vulnerable children. In the Netherlands, vulnerable children such as refugee children and asylum seekers, children of ethnic minorities, children with a disability and chronically ill children cannot count on the same rights and the same treatment as other children (*Kamerstukken II 2013/14, 33 826, nr. 1, bijlage Nationaal Actieplan Mensenrechten*). Children living in the municipalities in the Caribbean part of the Kingdom deserve particular attention in this respect, as a large proportion of the children growing up in poverty are found there (*Kamerstukken I 2012/13, 33 400-IV, Y*).

Recommendation

- Protect the most vulnerable children against social exclusion and discrimination.

LGBTI children

Children who are lesbian, gay, bisexual, transgender or children with an intersex condition (LGBTI) constitute a particularly vulnerable group. Although the Netherlands has taken steps in order to improve the situation of children belonging to this group, suicide rates remain alarmingly high (up to five times higher than average). There are also protection gaps in education, health care and youth services. Furthermore access to health care for transgender children is inadequate and almost nothing is

known about the human rights situation of children with an intersex condition. LGBTI people, and LGBTI children in particular, are affected by social norms on gender (male/female binaries and stereotypes) and sexuality (heterosexuality as the norm). They face discrimination, social exclusion, and stigmatization. Research shows that there is still a lot to improve, especially in education and youth services (COC Nederland, 2013).

The Ministry of Education, Culture and Science and the Ministry of Health, Welfare and Sports pay specific attention to the problems faced by this group of children and young adults. Specific measures that were taken by the government include the new transgender legislation and the requirement for schools to include information on sexual diversity and sexuality in the school curriculum. Although the new gender reassignment law (*Besluit aanwijzing deskundigen transgenders*, Stb. 2014, 222) no longer requires transgender individuals to undergo sterilization and other surgical procedures, it is still impossible for children younger than 16 years to change their gender in official documents. Additionally, it is still necessary to obtain a supporting opinion from an expert. These elements constitute a violation of a child's right to self-determination. Since 2012, schools are required to pay attention to sexual diversity and sexuality in their curriculum. However, teachers often lack knowledge about the subject, particularly concerning transgender children and children with an intersex condition. Homophobic bullying makes schools a socially unsafe space for LGBTI children, which causes harm to their wellbeing and access to education.

In youth services and health care, some serious gaps remain. Although the level of transgender care is high in the Netherlands, access to these services is not always guaranteed: for example, waiting lists are long because there is a limited amount of facilities that provide these specific services. In the youth care system, LGBTI children are invisible. This leads to an extra vulnerable position for young LGBTI people and a lack of expertise or even awareness on the part of officials.

Children with an intersex condition face particular rights violations. Because of a lack of research, it is unclear how often infants with an intersex condition are subjected to 'normalising' medical procedures. It is clear, however, that those procedures are often medically unnecessary and constitute a violation of the right to self-determination of the children in question. In general, there is a lack of knowledge about the rights situation of children with an intersex condition, and more research is necessary.

Recommendations

- Ensure there is structural attention in teacher training programs for sexual diversity, gender diversity and intersex conditions to increase knowledge amongst teachers; and integrate these issues in the teaching materials of primary and secondary school education.
- Improve the expertise of health care and youth care professionals on the specific needs of LGBTI children and youths. Develop specific policy to ensure continuous attention to these issues.
- Improve visibility of and knowledge about children with an intersex condition, by doing research into their wellbeing and by developing specific policy addressing their needs and issues.

Minority languages

Aside from Dutch, the Netherlands has several other languages, spoken in certain parts of the country. Recognized minority languages in the Netherlands are 'Fries', 'Limburgs' and 'Nedersaksisch'. Organisations report that it is often difficult for children to speak these languages because little or no attention is paid to them in education, on television and on the radio. There have also been complaints that not enough teachers are qualified to teaching subjects in these minority languages.

Recommendation

- Guarantee that enough attention is paid to minority languages in education and in the media.

Status of child and youth participation in the Netherlands

The NGO Coalition for Children's Rights is concerned about the status of child and youth participation in the Netherlands. Children do not have the option of rejecting government policy, because they are not allowed to vote yet. They cannot express their voice in society in that way. Other forms of participation are therefore required, particularly with respect to policies that directly affect them. The UN CRC prescribes children's participation in cases where decisions are taken about children. It is important that the government accepts its responsibility for child and youth participation by providing for an equivalent level of child and youth participation at the national and local levels. Youth organisations are needed to realise the right to participation in practice. Children's and youth organisations are currently subject to cutbacks, contrary to the UN Committee on the Rights of the Child advice. This will further reduce child and youth participation, which is now still safeguarded through a healthy structure of youth organisations.

Recommendations

- Ensure child and youth participation at all policy levels.
- Ensure that youth organisations are not hurt by cutbacks. Invest in (the continued existence of) a healthy structure of youth organisations that provide children and youths with opportunities to participate.

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Legislation and policy

- Besluit van 19 juni 2014, houdende aanwijzing van deskundigen als bedoeld in artikel 28a van Boek 1 van het Burgerlijk Wetboek (Besluit aanwijzing deskundigen transgenders), *Stb.* 2014, 222.
- Wet van 28 september 1989, houdende nieuwe bepalingen inzake het kiesrecht en de verkiezingen (*Kieswet*), *Stb.* 1989, 423.
- Wet van 31 oktober 1991 houdende regelen betreffende de openbaarheid van bestuur, *Stb.* 1991, 703.
- Wet gelijke behandeling op grond van handicap of chronische ziekte, *Stb.* 2003, 206.
- Wet van 29 juni 2006 houdende nieuwe regels betreffende maatschappelijke ondersteuning (*Wet maatschappelijke ondersteuning*), *Stb.* 2006, 351.
- Wet van 20 september 2010 tot wijziging van de Wet Nationale ombudsman in verband met de instelling van de Kinderombudsman (*Wet Kinderombudsman*), *Stb.* 2010, 716.
- Wet van 1 maart 2014 inzake regels over de gemeentelijke verantwoordelijkheid voor preventie, ondersteuning, hulp en zorg aan jeugdigen en ouders bij opgroei- en opvoedingsproblemen, psychische problemen en stoornissen (*Jeugdwet*), *Stb.* 2014, 105.
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2.1 FAMILY LAW

(Articles 3, 5, 9, 12, 17, 18, 19, 20, 25 CRC)

Introduction

Minors are directly or indirectly involved in many family law cases, such as divorce and issues of parentage and parental authority. The UN CRC requires that in all cases involving minors, the interests of the minor need to be taken into account as a primary consideration. This is not yet standard practice in the Netherlands. The right of minors to give their opinion, which should be given due weight, is not accomplished enough.

Hearing children

In contrast to older children, hearing children younger than 12 years old is not a standard procedure in cases that (also) affect him or her, such as a divorce, visitation rights or custodial placement. They can request the judge to be heard, but it is up to the judge to decide whether or not this is necessary. For that reason, children younger than 12 years old are in a weaker position than those aged 12 years and older. Professionals involved in family law procedures need to be trained to communicate with children in a manner appropriate to the child's age and stage of development.

Recommendations

- Replace the minimum age of 12 years to hear children in private and family law with a limit that is not strictly based on age but also takes account of the child's capacities based on age, maturity and developmental stage.
- Train all professionals involved in family law procedures to communicate with children in a manner appropriate to the child's age and stage of development.

Representation by a guardian ad litem

Minors, care professionals and law professionals are insufficiently familiar with the existing possibilities offered by the guardian ad litem (*Bijzondere curator*), while this professional can play an important role in ensuring the child's best interests and voice are seen and heard. Consequently, the guardian ad litem is appointed in too few cases (Kentie & Hendriks, 2013; De Kinderombudsman, 2012). In the Netherlands, minors are in principle not competent to bring a civil case before the judge. They are represented by their legal representative, which is often one of the parents. In cases involving a conflict where the interests of the child and his or her legal representative may differ, Dutch law provides for the appointment of a guardian ad litem; for example in cases involving a divorce, a supervision order or custodial placement. The guardian ad litem then acts as a process representative and an advocate of the child's interests. The mandate of a guardian ad litem is not limited to legal procedures in court, but he or she can also act out of court as a mediator between parents or guardians and the child. It turns out that some courts are more likely than others to appoint a guardian ad litem than others and that different criteria are used for the appointment. This way not every child that needs a guardian ad litem is assigned one (Kentie & Hendriks, 2013; De Kinderombudsman, 2012). In early 2014, the National consultation on the discipline of family and youth law (*Landelijk Overleg Vakinhoud Familie- en Jeugdrecht*) sent a working instruction to all courts concerning the deployment of the guardian ad litem. The NGO Coalition for Children's Rights welcomes this instruction as a positive step towards a greater awareness and more uniform deployment of the guardian ad litem. However, the instruction is still insufficiently implemented and parents, children and care professionals are often unaware of it.

Recommendations

- Increase familiarity with the guardian ad litem among minors, care professionals and law professionals.
- Ensure that the guardian ad litem for minors is used more frequently and is appointed based on of uniform criteria.

Representation in out-of-home placement procedures

Minors involved in an out-of-home placement procedure are not always entitled to their own lawyer. Except when it concerns placement in a closed youth care institution, parents are expected to represent the child. However, it is doubtful whether parents are always capable of representing their child in an objective and constructive manner. It is furthermore uncertain whether minors are sufficiently informed by their parents about their own rights and whether the child's views are communicated to the judge in a legally valid manner. The NGO Coalition for Children's Rights believes that appointing a juvenile lawyer to minors involved in an out-of-home placement procedure should be among the available options.

Recommendation

- Ensure that, in case of out-of-home placement, every minor can enlist the support of a lawyer specialised in child law free of charge, so that the minor is adequately informed about his or her rights and that his or her views are communicated to the judge in a legally valid manner.

2.2 YOUTH CARE

(Articles 2, 3, 5, 6, 9, 11, 12, 16, 17, 18, 19, 20, 23, 24, 25, 27 paragraph 4 and 39 CRC)

Introduction

The entire youth care system will be thoroughly overhauled in 2015. The changes currently prepared cause much uncertainty. The NGO Coalition for Children's Rights is concerned about the consequences of the system change for the observance of children's rights.

Transition and transformation of the youth care system

With the enactment of the Youth Act on 1 January 2015 (*Stb.* 2014, 105), the responsibility for virtually all forms of youth care will be decentralised from state level to the municipal level (*Stb.* 2014, 105). This operation is accompanied by budget cuts. The municipal authorities are subjected to a significant work load and strong time pressure, making it highly uncertain for a number of municipalities whether they will manage to implement all the changes by 1 January 2015 (NJI, 2014). The fourth report by the Transitional Committee Youth System Revision (*Transitiecommissie Stelselherziening Jeugd*) indicates that the municipalities have too little capacity and expertise and that the purchase of youth care services is lagging behind, jeopardising the continuity of youth care services following the transition. Information for clients about the offer of services that municipalities shall provide is also insufficient (TSJ, 2014). The NGO Coalition for Children's Rights furthermore finds it worrisome that the current monitoring by the state and the municipalities is not yet up to par.

In principle, the NGO Coalition for Children's Rights supports the premises of the new youth care system. The focus on a better connection to the child's specific needs and offering timely and appropriate support with a view to the family's own problem-solving capacity and support network can contribute to the realisation of the UN CRC (*Kamerstukken II* 2012/13, 33 684, nr. 3). However, these premises can only be realised in practice if the municipalities manage to solve the bottlenecks identified above.

Recommendations

- Ensure that municipal authorities have the capacity to fulfil their responsibility for youth care so that they can offer timely appropriate care and support and child protection to every child in need within the municipal boundaries.
- Ensure that the municipality and the state continually monitor and map out the risks and challenges brought by the new youth care system.

Exclusion of undocumented children

Despite the fact that the Youth Act was drawn up on the basis of the UN CRC, the Act is in breach of this and other international conventions on a number of points. Undocumented children, for example, are legally barred from accessing youth care under the Youth Act (Article 1.3 paragraph 2 Youth Act). This is in breach of Article 2 CRC. The Youth Act Implementation Decree (*Uitvoeringsbesluit Jeugdwet*) partly repairs this exclusion (Article 1.2 paragraph 1 Youth Act Implementation Decree). This decree stipulates that the municipality's obligation to provide youth care also applies to aliens without legal residence in the Netherlands, but this obligation is limited to not longer than the duration of stay and to a maximum of 6 months. Further, foster care for undocumented children is only possible if this is in the interest of the child's development (Article 1.2 paragraph 1 Youth Act Implementation Decree, see also Article 2.3 paragraph 6 Youth Act). The NGO Coalition for Children's Rights considers this repair to be far from sufficient. Undocumented children still face unequal access to youth care. The NGO Coalition for Children's Rights urges that the Youth Act is amended on this point.

Recommendation

- Annul the statutory exclusion of undocumented children from the Youth Act.

Judicial review of the implementation of the provisional mandate for placement in a closed youth care institution

The new Youth Act provides for the placement in a closed youth care institution, without prior judicial review (Article 6.1.4 Youth Act). This provisional mandate for placement in a closed youth care institution (*voorwaardelijke machtiging gesloten jeugdhulp*) is initially issued by the judge. However, the decision to implement this mandate is taken by the youth care provider (Article 6.1.6 paragraph 2 Youth Act). This provider is also responsible for the placement in the institution and for the minor's compliance with the conditions (Article 6.1.6 paragraph 1 Youth Act). The NGO Coalition for Children's Rights points out that a judicial review is mandatory in case of placement in a closed youth care institution and calls for the implementation of the provisional mandate for placement in a closed youth care institution to first be reviewed by a judge.

Recommendation

- Revise the new Youth Act to ensure that the provisional mandate for placement in a closed youth care institution can only be implemented following a prior judicial review.

Child and youth participation

An important condition to achieve the intended goals of the transition and transformation is that minors and their parents are actively involved in designing the system, the policy and the implementation thereof. With all the strain of the transition and the concomitant uncertainties, the NGO Coalition for Children's Rights sees that the transformation process is under pressure and that this condition is not or barely fulfilled.

Research has shown that municipalities do have the positive intention to involve clients and client organisations in preparing policy, but that they hardly manage to do so in practice (Van der Gaag et al., 2013). Moreover, it is uncertain whether municipalities are sufficiently equipped to actually and actively involve children and their parents in the youth care policy and the practical implementation of the Youth Act. Participation by children, youths and parents has not been a priority so far. The NGO Coalition for Children's Rights finds it very important that this changes. The voice of children,

youths and parents who will be affected by the Youth Act must be heard, and not only in individual cases but also collectively.

The NGO Coalition for Children's Rights finds the budget cuts to client participation in youth care a cause for concern. In recent years, the Ministry of Security and Justice made cuts to the National Youth Care Client's Forum (*Landelijk Cliëntenforum Jeugdzorg*, LCFJ), for example. Additionally, the largest client organisation for youth care, mental health care, social care and addiction care (*LOC Zeggenschap in Zorg*) merged with the LCFJ on 1 April 2012. The cuts and the merger mean that there is less attention for advocating the interests of children, youths and parents in youth care, given the minimal financial support provided by the Ministry of Health, Welfare and Sport.

The obligation for municipalities to actively involve children, youths and parents in developing and implementing policy is embedded in the Youth Act (*Stb.* 2014, 105) and the Social Support Act (*Wet Maatschappelijke Ondersteuning*, WMO, *Stb.* 2006, 351). The Youth Act furthermore requires that children, youths and parents should be able to influence the quality of the care provided to them. This is an important goal, with the UN CRC in mind. To stimulate the dialogue about the quality of care between policy makers/professionals and children, youths and parents, the Quality 4 Children Quality Standards in Out-Of-Home Child Care could be used more extensively. These standards provide a vision on the quality of youth care, from the perspective of children, youths and their (foster) parents (Van Beek & Rutjes, 2009).

Recommendations

- Actively involve children, youths and their parents in the development and implementation of youth care policy at the local and national level.
- Guarantee that children, youths and their parents have a genuine influence on informing and assessing the quality of youth care.

Access to appropriate care and support

The decentralisation of government tasks in the protection of and care for children could lead to legal inequality. The central government becomes responsible for the system of youth care and the municipalities become responsible for the implementation and funding thereof (Chapter 2 Youth Act & Article 2.6 Youth Act). The local authority has discretionary power to develop and implement youth care in its own municipality. Therefore, the offer of and access to youth care will become dependent on the choices made at the municipal level. As a result, a child may receive a certain form of intervention in one municipality, while a child with the same problem must do without or with a less effective intervention in another. The NGO Coalition for Children's Rights points out that this is in breach of Article 2 CRC.

Recommendation

- Prevent unjust differences from arising in the revised Youth Care system in the access to and the quality of the youth care.

Youth care obligation

The NGO Coalition for Children's Rights is worried that municipalities may not manage to purchase sufficient care with which to provide low-threshold support to children and families in good time and where necessary to support them with more robust forms of care, such as youth mental care (*jeugd-ggz*). The higher costs generally associated with such care need to be borne by the municipality as from 1 January 2015 (TSJ, 2014). The enactment of the new Youth Act means the end of the 'right to youth care' as established in the 2004 Youth Care Act, and of the assured right to youth mental care as established in the Healthcare Insurance Act. This is now replaced by the youth care obligation: the obligation for municipalities to create provisions for minors where necessary, so that a minor can grow up in safety and good health (Van der Gaag et al., 2013). During the debate on the Youth Act in the Dutch Senate, the state secretary for Health, Welfare and Sport made the

assurance that the youth care obligation obliges municipalities to arrange for care if the professional involved believes that such care is necessary, even if there is no more budget for this (*Kamerstukken I* 2013/14, 33 684, no. 19). Future practice will show whether this assurance is sufficient. The NGO Coalition for Children's Rights calls on all involved to make sure that all minors receive the youth care that they need, that waiting lists are avoided and especially to prevent budgetary reasons from motivating a choice for 'second best' youth care.

Recommendation

- Guarantee that all minors who require youth care can receive appropriate care; ensure that there is sufficient care capacity so that no child needs to wait for the necessary care for longer than is acceptable; ensure that they can get the necessary care, even if this is only available outside the municipality or needs to be purchased additionally; and prevent budgetary reasons from motivating the provision of 'second best' youth care.

Family relocation

If a family moves from one municipality to another, there is a risk that the youth care is not continued in the new abode, for instance because the new municipality does not have a contract with the youth care provider concerned or for budgetary reasons. It is after all the municipality where the parents live that determines and pays for the youth care for their child. The NGO Coalition for Children's Rights finds it very important that, in case the parents relocate to another municipality, the youth care is continued by the new municipality.

Recommendation

- Ensure that, in the event of a family relocation, the youth care provided by the first municipality is continued by the second municipality, without any interruption due to administrative or bureaucratic procedures.

Protection of the privacy of minors and their parents

Transferring youth care tasks to the municipal level gives rise to risks concerning the privacy of the children, youths and parents in need of youth care. There is the risk that personal data and policy information are coupled unnecessarily. Another risk is that personal data obtained in the context of the Youth Act are processed unlawfully. The NGO Coalition for Children's Rights reminds the central government of its obligation to prevent sensitive personal data from being passed around among different municipal departments. A family that must interact with the municipal authorities for instance with regard to housing, work or social benefits, should not be disadvantaged in any way because of their youth care dossier. Additionally, a 2014 survey revealed that clients are still insufficiently aware of how information is exchanged and what their rights and obligations are (Van der Steenhoven, 2014). The NGO Coalition for Children's Rights finds it very important that children, youths and parents that are involved with youth care are informed about the information exchanges that occur, so that they can file their objection to this in good time, should they wish to do so.

Recommendations

- Ensure that the information transfer within municipalities and from the municipalities to the central government is closely defined and regulated, to prevent any violations of privacy.
- Inform children, youths and their parents about information exchange in the youth care system and about their privacy rights.

Professionalisation of youth care professionals

The Act of 21 May 2014 to amend the Youth Care Act and some other acts for the professionalisation of youthcare (*Wet van 21 mei 2014 tot aanpassingen van de Wet op de jeugdzorg en enkele andere wetten ten behoeve van de professionalisering van de jeugdzorg*, *Stb.* 2014, 220) is the concluding part of the Implementation Plan for the professionalisation of youth care (*Implementatieplan*

professionalisering Jeugdzorg). This act stipulates that youth care institutions are obliged to work with registered youth care professionals and behavioural scientists. The mandatory registration in the Quality Register is coupled to continual further training and education. Additionally, an occupational code of conduct will be implemented and guidelines for youth care formulated. The plan also provides for the introduction of disciplinary law, so that the profession can supervise its own professionals. The Youth Act also devotes attention to further professionalisation and to working with registered professionals (Articles 4.1.1 paragraph 1 & 4.1.6 paragraph 5 Youth Act). A new quality framework is to be developed, to apply for all professionals concerned. It is highly uncertain, however, whether there will be enough money, time and opportunity for the professional development of practitioners and for reflection and exchange between professional peers. The NGO Coalition for Children's Rights fears that the system change with associated cutbacks will hamper the proper continuation of the professionalisation plans that have already been launched.

Recommendation

- Continue with the professionalisation of youth care: continue to invest in the education and further training of youth care professionals and make sure that they have enough time and opportunity for reflection and peer to peer intervention.

Child protection measures

Family supervision orders and custodial placement

Recent figures indicate that the number of family supervision orders has declined from 33,168 children in 2009 to 27,989 in 2013 (*Kamerstukken II 2013/14, 31 839, nr. 327*). Also, a declining trend is apparent in recent years regarding the number of custodial placements under a family supervision order. At the end of the fourth quarter of 2012 there were 11,796 custodial placements, 6 months later this number was 11,331. The number of custodial placements with guardianship was set at 7,346 at the end of the fourth quarter of 2012, and six months later this number was 7,550 (*Kamerstukken II 2013/14, 31 839, nr. 327*). In the opinion of the NGO Coalition for Children's Rights, the number of custodial placements is still much too high. Moreover, despite the drop in the number of family supervision orders and custodial placements, it has not been demonstrated that the safety of children has improved. Various organisations, including the Children's Ombudsman, question the care with which such decisions are taken. The NGO Coalition for Children's Rights points to the importance of investing in appropriate support and care for families, in order to reduce the need for custodial placements.

The NGO Coalition for Children's Rights finds it worrisome that the available figures do not show a comprehensive overview of the number of children in custodial placement, nor a differentiation in terms of those placed in institutions and those placed in family arrangements, foster care or substitute family homes (*gezinshuisplaatsing*). The NGO Coalition for Children's Rights finds it very important to have reliable figures available in good time. Also, figures must be available on the duration of the stay and the care that is provided. A rigorous registration system is required to achieve, through the monitoring and evaluation of the data, an improvement of the practice in which custodial placement is used as a final recourse and a reduction in the number of children placed in (closed) institutions.

Recommendation

- Create a rigorous registration system that yields insight into the number of children taken into custodial placement, the type of institution or foster family that the child is placed into, the duration of the stay and the type of care that is provided.

Foster care and residential care

It is a positive development that, via the amendment ‘in house placement’ (inhuisplaatsen), the ranking order of alternative care for children that cannot live at home is embedded in the Youth Act. This means that, in case of custodial placement, the first option to investigate is a substitute family situation, unless this is demonstrably not in the child’s best interest. In this way, the Netherlands complies more closely than previously with Article 20 paragraph 3 CRC. This development requires enhancing the familiarity with and deployment of the International Guidelines for alternative care for children (UN doc A/Res/64/142).

Recommendation

- Formulate policy that aims to realise the ‘in home placement’ policy and to reduce the number of children living in institutions. Use the International Guidelines for alternative care for children as starting point.

Insufficient availability of foster parents

The NGO Coalition for Children’s Rights points out that it is currently a problem to find enough suitable foster families and substitute family homes, especially for children aged ten and older, children with an immigrant background and for siblings together (Pleegzorg Nederland, 2013). As a result, custodial placement often results in children being placed in institutions unjustly. As they are then no longer on the waiting list, it is no longer apparent that they are actually waiting for a place in a foster family or substitute family home (Pleegzorg Nederland, 2013). From 1 January 2015 it is mandatory by law to ensure that children who temporarily or permanently cannot live in their own family can grow up in family situation, unless this is not in their best interest. Municipal authorities and youth care institutions will need to actively pursue policy to this end. This policy should focus, first, on recruiting sufficient suitable foster families and substitute family homes; and second, on preventing that existing foster family and substitute family home placements end prematurely so that children need to be transferred.

Recommendation

- Ensure that municipal authorities and youth care institutions actively pursue a policy aimed at achieving a sufficient availability of suitable foster families and substitute family homes, so that children that need alternative care can grow up in a family situation.

Breakdown and transferrals

A custodial placement is in principle meant as a temporary measure, until the home situation has improved. Nevertheless, in the majority of cases the return home cannot be realised. A ‘child rearing decision’ (*opvoedingsbesluit*) on the child’s perspective for the future and a definitive placement is often deferred for years and years, due to the conflicting interests of the parties involved. Foster children are transferred 1.3 times on average within a period of 18 months. As a result, these children experience a lot of uncertainty as to their fate and future, which has an extremely detrimental effect on their development (Van den Bergh & Weterings, 2007; Weterings, 1998). Research has shown that each transfer or relocation poses a risk to the child’s development (Singer et al., 2012; Newton et al., 2000). Furthermore, several studies have shown that, in the Netherlands, approximately 45 percent of foster care placements are terminated prematurely for negative reasons (‘breakdown’). The causes for these breakdowns may relate to poor matching, problematic behaviour by the child, insufficient understanding and parenting skills by the foster parents and to a disturbed relationship between the biological parents, the foster parents and the professionals (Van den Berg, 2013; Fisher et al., 2000). The NGO Coalition for Children’s Rights calls for faster decisions when it comes to a child’s perspective in a foster family, substitute family home or residential institution. Furthermore, the number of relocations should be limited as much as possible.

Recommendations

- Ensure that, directly following an out-of-home placement, intensive efforts are made to improve the home situation and provide for a realistic assessment of the chance that the child can be returned safely, so that a definitive child rearing decision can be made as soon as possible.
- Prevent the premature breakdown of existing foster care and substitute family home placements and devote maximum effort to a) proper matching, b) enhancing foster parents' parenting skills, c) adequate supervision of foster families and d) an equal working relationship between foster parents, parents and professionals.

Safety in foster families and residential institutions

The NGO Coalition for Children's Rights is concerned that the transition and associated cutbacks will put pressure on the extra attention required to boost the safety of minors in institutions and foster families. In 2012, the Samson inquiry committee (*Onderzoekscommissie Samson*) investigated the nature, size and consequences of the sexual abuse of children in custodial placement from 1945 to 2010. The results of a 2010 study among minors revealed that children and youths in residential institutions report abuse 2.5 times as often as children and youths in 'normal' families or foster families. Children and youths with a mental disability are 3 times as much at risk of sexual abuse than other youths in custodial placement without a (mild form of) mental disability (Commissie Samson, 2012).

The Samson Committee formulated recommendations with respect to improving the detection of signs of abuse, and the communication and cooperation between professionals involved in the care for the child. Following the report, foster and youth care organisations are taking a variety of progressive measures. Under the leadership of the Rouvoet Committee, the 'Quality Framework for the Prevention of Sexual Abuse' (*Kwaliteitskader voorkomen seksueel misbruik*) was drawn up, setting out specific measures for the effective implementation of the Samson Committee recommendations (Jeugdzorg Nederland, 2013). It is currently a specific duty of the Youth Care Inspectorate to closely supervise the implementation of the Quality Framework guidelines (*Kwaliteitskader*) (*Aanhangsel van Handelingen II* 2013/14, nr. 1970; *Kamerstukken II* 2013/14, 33 435, nr. 15).

Recommendation

- Continue to invest in the safety of minors in foster families, substitute family homes and residential youth care institutions. Guarantee that the implementation of the Quality Framework for the Prevention of Sexual Abuse will continue to be implemented during the transition and the transformation of the youth care system and that the Samson Committee's recommendations will be heeded and implemented.

Placement of minors in closed youth care institutions

The NGO Coalition for Children's Rights has determined that the number of placements in closed youth care institutions is high. There are 14 closed youth care organisations in the Netherlands, with a total of 23 institutions. In 2011, 3,261 children were placed here. Similar data for 2012 and 2013 are not yet available. To place a minor in a closed institution requires the authorisation of a juvenile judge. The NGO Coalition for Children's Rights has received worrying signals from lawyers, the judiciary and scientists, that custodial placement in a closed institution is not always applied as a measure of last resort, and that part of the children are placed there on account of waiting lists for other institutions or because of an insufficient availability of more suitable care. The lack of appropriate care outside closed youth institutions also has an adverse effect on the flow to more open forms of care, so that children remain in closed institutions for longer than necessary. Custodial placement in a closed youth care institution means a deprivation of freedom. This measure should therefore be applied with extreme caution.

Legal position of minors in closed youth care institutions

In the Netherlands, minors can be placed in a closed institution within the context of criminal law, juvenile psychiatry and youth care. The NGO Coalition for Children's Rights finds it unacceptable that, for the three forms of closed placements for minors that exist in the Netherlands, the content of the laws and regulations which regulate the legal position of minors differ significantly. For example, the legal position of minors placed in a young offenders institution within the context of criminal law has been elaborated much further in laws and regulations than the legal position of minors in closed youth care institutions. The harmonisation of legislation is therefore a matter of urgency, so that the legal position of minors in the varying forms of care in closed institutions is safeguarded to the same extent.

Recommendations

- Make policy aimed at making the placement of minors in a closed youth care institution a measure of last resort and ensure that there is enough support and care available so that the number of children in a closed youth institution will decrease.
- Reinforce the legal position of minors in closed institutions and harmonise the legislation for all forms of closed placements for minors.

Care for minors aged 16 years and older who leave foster or residential care

The NGO Coalition for Children's Rights notes that many youths and young adults that have spent (part of) their youth in foster families and residential institutions encounter problems in the transition to independent living and working. After leaving an institution or foster family, they often lack the necessary knowledge and life skills to look after themselves. They are insufficiently prepared for independence during their stay in the institution or with the foster family. Subsequently, upon their departure, there is no or hardly any attention for structural follow-up supervision and aftercare. The lack of care makes youths feel left alone, which increases the chance they run into trouble. Also, the option of extending youth care for young adults up to 23 years old is not used enough in practice (Harmsen & Rodenrijs, 2013). The NGO Coalition for Children's Rights believes that youths who leave the youth care system should not simply be left to their own devices. During their stay in a residential institution or with a foster family, the care professionals need to inform them about what it will require of them and to prepare them for independent living and to involve them in making a plan for the future. Also after their departure, there should be supervision and support and some kind of safety net that youths can turn to, should they need it.

Recommendations

- Prepare youths in foster families, substitute family homes and residential youth care institutions for independence, inform them well, make a plan for the future together and all in good time.
- Invest in programmes for independent living, practical supervision and life skills training for minors leaving their foster family or a residential institution.

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CHAPTER 3. CHILDREN WITH DISABILITIES, BASIC HEALTHCARE AND POVERTY

3.1 CHILDREN WITH DISABILITIES

(Articles 3, 12, 17, 18 paragraph 3, 23, 24 and 28 CRC)

Introduction

In 2012, the Netherlands was home to between 109,000 and 129,000 children with a motor, perceptual or mental disability. This amounts to approximately 3.5 percent of all children in the country. In 2012, over 68,000 children with disabilities used care or other provisions as a consequence of their disability (Tierolf et al., 2013). There are 108,000 children and youths in the Netherlands that are entitled to special education on the grounds of their disability, or are entitled to a special funding provision enabling a regular school to purchase specialist support for them. Particularly the group of children identified as having developmental or behavioural problems has increased in recent years. According to the 2012-2013 Education Report (*Onderwijsverslag*) of the Inspectorate of Education, there are around 70,000 students attending (secondary) special education, while 38,000 students use the individual funding provision (*leerlinggebonden financiering*) in regular education (Inspectie van het Onderwijs, 2014).

Convention on the Rights of Persons with Disabilities

The Netherlands signed the convention on the rights of persons with disabilities in 2007 (*Trb.* 2007, 16). The Convention has not yet been ratified, but the Netherlands intends to do this in 2015.

Recommendation

- Ratify the Convention on the Rights of Persons with Disabilities.

Children with disability in education

Special education is education for children who are blind or visually impaired, deaf or hearing impaired and/or have a mental, physical or multiple disability, are chronically ill or have a serious behavioural or psychiatric disorder. In the Netherlands, special education is given in separate schools. On 1 August 2014, the Inclusive Education Act (*Wet passend onderwijs*, *Stb.* 2012, 533) will take effect. This law aims that as many children as possible attend regular education and mainly focuses on children with a disability or learning difficulties and behavioural problems. (See chapter 4, paragraph 4.1, for a more comprehensive discussion of the Inclusive Education Act and its consequences). Parents of children attending regular education have access to extracurricular day care. Schools are obliged to provide for this. This does not apply to special schools, however, so that extracurricular day care is inadequate for children with disabilities.

Recommendation

- Ensure that provisions for extracurricular day care are made equally available to regular and special schools, so that children attending special education can always use this provision as well.

Children with disabilities in care and support

Children growing up with a disability or chronic illness will sometimes require other and often lengthier care, placing a larger and different burden on their parents or caregivers. Depending on the disability, the parents' care capacity and support from the social network, this burden can sometimes be too severe. To prevent more serious problems from arising, it is essential to identify and diagnose problems early and offer low-threshold, expert information and advice, practical and pedagogical support and, if necessary, (specialised) psychological treatment.

Children and youths with a mild mental disability require special attention in this respect. Although the term may suggest otherwise, this is not a mild disorder. Associated problems (limited social adaptability, psychiatric disorders and behavioural problems) occur frequently. There is insufficient data available on children with chronic psychiatric problems, so that there is no comprehensive overview of this group of children and their access to care.

Recommendations

- Monitor the number of children with disabilities and their access to care and support, distinguishing between motor, perceptual and mental impairment, in order to create special policy.
- Collect data on children with chronic psychiatric problems.

Financing of care

The Dutch government is reviewing the financing of care for the chronically ill, people with a disability and elderly people. This financing is currently regulated through the Exceptional Medical Expenses Act (*Algemene Wet Bijzondere Ziektekosten*, AWBZ, *Stb.* 1967, 655). From 1 January 2015, municipalities are qualitatively, quantitatively and financially responsible for a large part of the care and support for children and youths, which is currently regulated by the AWBZ.

The NGO Coalition for Children's Rights is concerned that, after the transition, the access to specialist expertise, early diagnostics, care, support and treatment for children and youths with complex and multiple disabilities in combination with associated problems, will not be sufficiently safeguarded at the municipal or regional level.

Recommendation

- Guarantee access to appropriate support and care for children with disabilities, also after the decentralisation of the youth care system, in every municipality and region.

Children with disabilities in child protection

A particularly vulnerable group in society are children with disability or chronic illness who cannot live at home due to serious developmental and/or child rearing problems and are supported by one of the specialized child psychological treatment centres (*orthopedagogische behandelcentra*) for youths. If voluntary support proves to be inadequate to allow them to grow up safely and/or if these children get in contact with criminal law, support is offered through compulsory measures: child protection measures or a juvenile probation order. If a mild mental disability has not yet been diagnosed, these youths are treated by criminal law in the same way as youths without any impairment, while an adapted approach is required to prevent recidivism. Police and justice officials are not yet sufficiently capable of recognising or acknowledging a light mental impairment among juvenile suspects, although they are increasingly aware of the possibility that such an impairment may exist.

Recommendation

- Ensure that children with an IQ of between 70 and 85 can always request specialised support, specialised services, specialised child protection services and specialised juvenile probation services.

Identification

An impairment is sometimes identified too late in educational and youth healthcare sectors. Especially children and youths of parents with a non-western background and with disabilities are difficult to identify and reach. Partly for this reason, preventive and lighter forms of care and support are offered late, or insufficiently adapt to the cultural background and views of these children and their parents.

Recommendation

- Ensure an early identification of a (mild) mental impairment, so children and their parents can be offered suitable support in good time.

Children with an impairment in child protection whose parents have no residence permit in the Netherlands constitute a highly vulnerable group. If the child is with the parents in the Netherlands, then the necessary care can be arranged for them but with a lot of effort. Once the parents' forced repatriation is pending, the children will no longer have suitable care in the home country and must sometimes fear for their lives. When assessing grounds for forced repatriation, the child's impairment is insufficiently taken into account.

Recommendation

- Ensure that children with an impairment who have no residence permit have access to the care and support that they need and ensure that they are not forcibly repatriated if the country of origin cannot offer suitable care.

3.2 BASIC HEALTHCARE

(Articles 3, 6, 12, 17, 24, 27 and 33 CRC)

Introduction

It demands the greatest possible effort on the part of the state to realise children's fundamental right to mental and physical health at the highest possible level. Research by the National Institute for Public Health and the Environment (*Rijksinstituut voor Volksgezondheid en Milieu*) from 2014 reveals that a large part of the Dutch youth has a positive view of his or her own health (Hamberg-van Reenen et al., 2014). In 2012, 93 percent of people younger than 25 years said that they feel healthy. More than 95 percent of parents have their children aged 2 or younger vaccinated. Among school-aged children this is slightly less, namely between 92 and 93 percent (Hamberg-van Reenen et al., 2014). Parents who do not have their children vaccinated are mainly motivated by reasons of principle. Since 1 January 2014 it is prohibited to sell alcohol to people younger than 18 years old, and under-18-year-olds caught in the possession of alcohol are punishable by law (*Stb.* 2013, 380). Youth healthcare comprises a wide range of efforts aimed at promoting, protecting and safeguarding the health, growth and mental and physical development of children from birth until the age of 18. In the Netherlands, youth care is the responsibility of municipalities and is performed by care organisations and the public health service (*Gemeentelijke Gezondheidsdienst, GGD*). Since 2010, a Digital Dossier Youth Healthcare is created for every child from 0 - 18 years old, as soon as he or she first comes into contact with youth healthcare. Doctors, nurses and medical assistants in youth healthcare add information to this dossier so that health-related data are registered and can be transferred accurately and thoroughly. Data on the health of youth are maintained by the Youth Healthcare Monitor (*Jeugdgezondheidsmonitor*) and the National Youth Monitor (*Jeugdmonitor*).

Towards a child-friendly healthcare

With its robust primary healthcare system, the Netherlands must now take a step further towards child-friendly healthcare. In a child-friendly healthcare system, the rights and needs of the child are paramount. The system takes account of the child's development in all phases of the medical process and the child can participate in the medical choices that need to be made to the extent permitted by the child's age and development.

In September 2011, the Committee of Ministers of the Council of Europe adopted the *Guidelines on child-friendly health care*. These guidelines stipulate that such healthcare is based on five basic principles:

1. Participation by children (informing, consulting, hearing them).
2. Promoting good health (giving children control over their own health).
3. Protection (against health risks and medical errors).
4. Preventive healthcare (primary, secondary, tertiary).
5. Provisions of good quality throughout the medical process.

An important condition is that all medical professionals are trained in children's rights and child-friendly healthcare, both during their basic training and further training, to a far greater extent than currently is the case.

Recommendations

- Integrate the Council of Europe's guidelines on child-friendly healthcare in the healthcare system and in the training of medical professionals.
- Ensure that medical professionals are trained in children's rights and in child-friendly health care.

Euthanasia

In het Netherlands, minors between the age of 12 and 16 may independently request euthanasia, but for a request to be granted, the minor's parents must consent to their child's wishes. If the minor is 16 or older, then it only requires that the parents are involved in the decision-making process. These rules are set out in the Euthanasia Act of 2002 (*Wet toetsing levensbeëindiging op verzoek en hulp bij zelfdoding*, *Stb.* 2002, 165). A request for euthanasia may be considered by a doctor if the minor is 12 years or older and legally capable. Regional assessment committees on Euthanasia (*Regionale Toetsingscommissies Euthanasie*) assess whether a doctor who performed euthanasia complied with all the rules and requirements of the Euthanasia Act. Recently, a debate has emerged on whether children younger than 12 should also be entitled to submit an independent request for euthanasia. This is not possible at the moment.

Based on figures obtained from the regional assessment committees, there is a total of 5 known cases of euthanasia of minors between 2002 and 2014. In four cases it concerned 17-year-olds, and once a 12-year-old. Given the limited number of cases of euthanasia among minors, no figures are listed in the annual reports of the regional assessment committees (information provided by the Regional assessment committees on Euthanasia via email to UNICEF Nederland, June 2014). However, in order to provide the fullest possible overview, it is recommended to explicitly list these figures each year. Euthanasia among legally capable minors needs to be distinguished from the medical termination of life of very young children. Since March 2007, there is an Expert committee on late termination of pregnancy and termination of life of new born infants' (*Centrale deskundigencommissie late zwangerschapsafbreking en levensbeëindiging pasgeborenen*, hereinafter: Expert Committee). This Expert Committee assesses whether the reported cases of medical termination of life of new born infants or of late termination of pregnancy (after 24 weeks) took proper account of the statutory rules and requirements. The Expert Committee serves as an advisory body to the Public Prosecutor's Office in assessing whether a doctor showed proper diligence in such a case. In 2009 the Expert Committee received the first and so far only report of a case of medical termination of life of a new born infant. The doctor was judged to have acted with proper diligence.

Medical-empirical research in the 2005-2006 period reveals that cases of active medical termination of life of new born infants rarely occurs in the Netherlands. Most of the decisions concerning the termination of life of new born infants concern decisions to stop or not apply a medically pointless treatment. These decisions are taken on the basis of valid medical-professional guidelines. Regardless of the formal legal framework, medical practice has raised legal questions, for example

about the risk of medical discrimination against disabled new born infants, the legal position of parents, the permissibility of using the concept of 'quality of life' as a basis for decision-making, and the distinction between palliative care (i.e. care for patients with an incurable disease during the last stages of their life) and an act of deliberate termination of life.

Since 2007, the Expert Committee has assessed 6 cases of later pregnancy termination. In all these cases the doctor was judged to have acted with proper diligence. There are strong indications that the introduction of systematic ultrasound scans (*Structureel Echoscopisch Onderzoek*, SEO), also referred to as the '20-weeks ultrasound scan', has resulted in less late pregnancy terminations. The 2013 evaluation by the Expert Committee reports an estimated 30 cases of late pregnancy terminations a year, compared to around 150 cases in the years before 2010 (Vathorst et al., 2013).

Recommendation

- Have the Regional Toetsingscommissies Euthanasia list the number of cases of euthanasia by minors in their annual reports and additionally state whether the doctors involved have acted with proper diligence.

Infant mortality

In the Netherlands, infant mortality remains comparatively high. A study shows that the Netherlands has the sixth-highest incidence of infant mortality in Europe. The mortality figures before or during the first four weeks after birth have declined by 14 percent, however (from 10,500 in 2004 to 9,000 in 2010). Reasons for this decline are found in a closer cooperation between care providers and a drop in risk factors such as the number of women who smoke during pregnancy and the number of teenage pregnancies (Euro-Peristat Project, 2013). Besides, the reason for this high rate of infant mortality in the Netherlands can be found in the fact that the Netherlands has a better registration system than other European countries.

Recommendation

- Invest in combating infant mortality in the Netherlands; continue to improve the cooperation between care providers in maternal care and continue to educate the public about risk factors.

Welfare diseases

In the period 2008-2012, over 15 percent of children and young persons between the ages of 4 and 25 years were overweight, according to the national 2013 Youth Monitor (CBS, 2013). Over 3 percent even qualified as obese. According to Statistics Netherlands (*Centraal Bureau voor de Statistiek*, CBS), in 2013 over half of youngsters aged 12 to 16 years complied with the Dutch Standard for Healthy Exercise (*Nederlandse Norm Gezond Bewegen*: 60 minutes of moderately intensive exercise daily). Almost 65 percent of those between 16 and 20 years meet this norm. The number of underage smokers aged 12 to 18 years is relatively high in the Netherlands, although the number did drop from 17 percent in 2011 to almost 11 percent in 2012. The average age at which children first drink alcohol is around 13 years (CBS 2013). The consumption of alcohol among youths aged 12 to 18 years has also decreased, though over one-third of this group drinks one to four glasses of alcohol every week (Hamburg-Van Reenen et al., 2014). One in three young people used marijuana at the age of 16 years or below (CBS, 2013).

A 2014 RIVM study shows that half to three-quarters of youngsters between the ages of 10 and 18 years visit dance or music events (Hamburg-Van Reenen et al., 2014). In clubs and discotheques they are exposed to noise levels significantly higher than 103 dB(A) (Coenen et al., 2012). Temporary as well as permanent hearing damage can occur from 80 dB(A). There are currently no regulations in place to protect the hearing of visitors to entertainment venues, according to the same study (Gommer et al., 2013; Hamburg-Van Reenen et al., 2014).

Youth healthcare sees children at a young age at various moments. It is important to monitor youths

preventively in their development more often, and to pay special attention to population groups that are at a higher risk.

Recommendations

- Do not cut funding for preventive youth healthcare.
- Youth healthcare should preventively monitor youths' development more often, paying special attention to population groups that are at a higher risk of welfare diseases.
- Invest in educating youths and their parents/carers about the risks of important health problems such as overweight and alcohol and other substance use, and about hearing damage as a result of exposure to noise.

Access to healthcare for vulnerable groups

The NGO Coalition for Children's Rights is concerned about the access to healthcare for children with a low economic or social status and/or for children without a residence permit (undocumented children). Children with a low economic and/or social status can encounter problems in accessing healthcare due to increasing health insurance premiums, changes to personal budgets (*persoonsgebonden budgetten*) and increasing unemployment among parents.

Many undocumented children and their parents are unaware that they are entitled to medical care. Many professionals of care institutions are likewise unaware of this (Pharos, UNICEF Nederland & Defence for Children, 2010). Undocumented children or parents are still regularly turned away at the hospital reception desk because they cannot show personal identification. Undocumented pregnant women, too, often have trouble getting access to a midwife, so they often receive care (too) late. Although health insurance is not possible for undocumented children, health care providers are allowed to reimburse the costs of necessary care to this group of children. One constraint to healthcare access for undocumented children is identified in the limited contracts with hospitals and pharmacies, so that undocumented patients need to travel further than is medically acceptable. Only contracted pharmacies and hospitals (under conditions) can reimburse the costs for care to this group of patients (Pharos, UNICEF Nederlands & Defence for Children, 2010).

Recommendations

- Ensure access to healthcare for all children in the Netherlands and give special attention to vulnerable groups such as undocumented children and children of a low economic and/or social status.
- Inform undocumented children, youths and their parents and medical personnel about the right of undocumented children to healthcare.

Interpreter's expenses reimbursement

On 1 January 2012, the regulation under which the government reimburses the costs for an interpreter in healthcare was abolished. The Dutch government holds the view that patients are personally responsible for having sufficient command of the Dutch language. If the patient wants to, he or she can arrange for an interpreter or translator, at his or her own expense. Abolishing the reimbursement for interpreters in healthcare can however lead to undesirable and even dangerous situations. Access to healthcare is impeded, the child's participation in the healthcare process stagnates, and a 'hands-and-feet' communication process between the doctor and parents and child can even lead to wrong diagnoses or improper treatment. In an evaluation following the abolishment of the regulation, the Minister of Health, Welfare and Sport concluded that, especially in family and mental healthcare, a shift is occurring from professional to informal interpreters (*Kamerstukken II 2012/13, 33 400-XVI, nr. 148*). The concern that parents and other family members will use children as interpreter seems to actually occur.

Recommendation

- Guarantee the reimbursement for interpreters in healthcare.

Breastfeeding

The figures for breastfeeding in the Netherlands are relatively low. The number of infants being breastfed immediately after birth declined from 81% in 2007 to 75% in 2009. Three months after birth only 29% of infants still receive exclusive breastfeeding (data on breastfeeding via the website of TNO, 2014). The figures in the state party report are referring to any form of breastfeeding, not exclusive breastfeeding (appendix to *Kamerstukken II* 2013/14, 26 150, nr. 134).

Since 2010 no national standardized data for exclusive breastfeeding have been gathered. Extra efforts by the government to monitor, protect and promote breastfeeding are needed. Implementation of the 'Baby Friendly Hospital Initiative' (BFHI) in the Netherlands (by Stichting Zorg voor Borstvoeding) has had positive effects on the numbers of mothers starting breastfeeding after delivery and still giving exclusive breastfeeding after 8 days (Lanting & Van Wouwe, 2007).

The Dutch government lists the drafting of the Breastfeeding Charter (Landelijk Platform Borstvoeding, 2009) by parties in the field and the support to Netherlands Nutrition Centre (Voedingscentrum) as examples of enhanced efforts to promote breastfeeding. The government further maintains making every effort to fully implement the International Code of Marketing of Breast-Milk substitutes (WHO, 1981, hereinafter the WHO-Code). Fact is that since 2011 the government has given no extra attention to implement the breastfeeding Charter.

The Netherlands BFHI certification programme has been supported by the government for many years. Financing by the Ministry of Health, Welfare and Sport has stopped since 2011. Support by insurance companies is under pressure because of the high number of certified health care providers. A new National Prevention Plan 'Health Matters', which will run from 2014-2016, makes no specific reference to breastfeeding. The Netherlands Nutrition Centre is also suffering budget cuts by government affecting their pro-active dissemination of reliable information and materials on breastfeeding.

The government has chosen not to participate in the National Breastfeeding Council, set up by non-governmental agencies and associations of health care professionals. The National Breastfeeding Council (Landelijke Borstvoedingsraad) has developed an instrument for health care professionals to weigh the influence of companies on activities they participate in. This tool uses the WHO-Code and the Dutch Food and Commodities Act as references. The Food and Commodities Act (*Warenwet, Stb.* 1935, 793) only partially translates the WHO-Code into Dutch legislation.

Recommendations

- Ensure standardized data for exclusive breastfeeding are registered and monitored regularly to allow for necessary policy evaluation and adjustments.
- Proactively contribute to the protection and promotion of breastfeeding in the Netherlands. Women who choose to breastfeed their children should be enabled to do so, for as long as they want.

3.3 POVERTY

(Articles 3, 4, 6, 12, 26, 27 en 31 CRC)

Introduction

Children growing up in a poor or low-income family are more prone to poor health, to below-average results at school, and tend to lag behind in their cognitive and emotional development (UNICEF, 2010). Poverty during youth particularly affects children if they are exposed to poverty from a young age on and for a prolonged period of time. Poverty and unemployment are also risk factors with respect to child maltreatment. The risk of child maltreatment is five times higher in families where both parents are unemployed (Alink et al., 2011).

Poverty is a relative concept that can be measured in various ways: one way is to examine a household's financial scope for expenditures, another way is to examine indicators that point to material poverty. In the Netherlands, various income markers are used to define poverty. In this report, the poverty line is conceived as the statutory minimum living standard as established by official policy, which amounts to 110, 120 or 130 percent of the statutory minimum wage, depending on the choices made by municipalities.

Current developments

According to the 2013 Poverty Survey (*Armoedesignalement*) poverty among children has increased substantially in recent years (CBS & SCP, 2013). About one-third of all poor people in the Netherlands is underage. In 2012, the Netherlands Institute for Social Research (*Sociaal en Cultureel planbureau*, hereinafter: SCP) definition of poverty (the 'not much but just enough criterion': the minimally requisite expenditure for food, clothing, household expenses and social participation) applied to 384,000 children. Particularly children in single-parent families, children of non-Western backgrounds and children in welfare benefit-dependent families are at an increased risk of growing up in poverty. According to the report '*Kinderen met kans op armoede*' (*Children at risk of poverty*), the proportion of children at risk of poverty in the Netherlands is low, compared to other EU member states (Ewalds & Bos, 2010).

The Netherlands maintains its reservation regarding Article 26 CRC, despite previous recommendations by the UN Committee on the Rights of the Child to withdraw it. Accordingly, children in the Netherlands have no independent right to social welfare.

Recommendations

- Withdraw the reservation to Article 26 CRC.

Social exclusion

Children in poverty are at an additional risk of social exclusion as the financial constraints mean that they cannot or can hardly participate in social and cultural activities. Besides, poverty appears to have a strong impact on children's well-being through the often severe psychological strain of living in poverty. Research results show that children perceive living in poverty as very upsetting. Being unable to join a sports school, or to give birthday parties, or to participate in the latest trends, can result in social exclusion and even in bullying. Many children in poverty also suffer physical and/or psychological complaints because they worry about the poverty in the family (De Kinderombudsman & Verwey-Jonker Instituut, 2013).

Over the course of years, the Dutch government has become more aware of the consequences of poverty for children. Especially the social participation of poor children and social exclusion received extra attention. Although the Ministry of Social Affairs and Employment allocated 40 million euros to municipalities in 2008 and 2009 to reduce the number of children unable to participate in cultural and sports activities by half, this goal was not achieved. Children's participation very much depends on their parents' participation. In the view of the Dutch government, combating poverty and social exclusion is primarily a matter of increasing job market participation. However, having a job does not necessarily guarantee a way out of poverty.

Municipalities have the statutory obligation to draw up policy aimed at enabling the participation of children of poor families. The municipal poverty policy is an important tool to improve the situation of children in poverty. It nevertheless appears that many municipalities have not yet sufficiently embedded their poverty policy. Initiatives such as food banks are often privately organised, so that they always depend on (the efforts of) volunteers. Many municipalities are currently working with a 'child package': a package of discounts for poor families, for instance with discount vouchers for swimming lessons or music lessons, or a contribution to buying a laptop computer. The views and experiences of children barely play a role in developing such poverty policy (De Kinderombudsman & Verwey-Jonker Instituut, 2013). The NGO Coalition for Children's Rights believes that this is a

missed opportunity, as children can make an important contribution here, based on their right to participation and on their own experiences.

Recommendations

- Continue to study the effects of poverty on children. Develop a comprehensive range of indicators to measure the effects of poverty on children. Also involve children from less visible groups such as undocumented children. Include the view of children from poor families in the study.
- Draw on the view and experiences of children in developing poverty policy.

Economic crisis

The NGO Coalition for Children's Rights is concerned about the consequences of the current global financial and economic crisis and the cut backs proposed by the Dutch government, for children in poor families. Poverty in the Netherlands is growing. Although a slight drop in the number of poor families is expected in 2014, the end of the economic crisis is not yet in sight, therefore remaining a cause for concern.

According to the Council for Work and Income (*Raad voor Werk en Inkomen*), the proportion of employed poor people in 2007 stood at 5 percent (of the total working population, consisting of both employees and self-employed people). This group is expected to continue to grow in the coming years as a result of the 2008 economic crisis, for example because two-earner households are reduced to single-earner households (*Raad voor Werk en Inkomen*, 2011). The council indicates that poverty is often the result of several factors that coincide. Risk factors are small part-time jobs where the salary level for full-time employment is at or just above the minimum wage level; the composition of the household (single-earners and single parents with children); and unstable employment relationships (such as short-term flexible work).

Municipal poverty policy

Combating poverty as a public task is primarily a task for municipalities. They are responsible for the social welfare benefits and for poverty policy. Municipalities receive a budget from the state to cover all the benefit payments. The government is responsible for the overall income policy. The budgets given to municipalities to financially support families with children has decreased substantially in recent years. The child regulations system, intended to support parents with children financially, is subject to budget cuts. This also affects parents with a low income. Thus, the amount of the Child Benefit (*Kinderbijslag*) has been reduced, as has the welfare benefit, while child day care became more expensive and the own contribution to healthcare costs was raised (Stb. 2014, 227).

Recommendations

- Implement a nation-wide poverty policy that specifically attends to the effects of poverty on children. Devote special attention to children living below the poverty level for two years or longer.
- Do not cut funding to children's regulations that are specifically intended to financially support parents with children.
- Improve support for children from poor families.

Direct effect of Articles 26 and 27 CRC

Between 2007 and 2010, Article 26 CRC was invoked 16 times in Dutch court cases. This occurred most frequently in cases where persons without a legal residence permit unsuccessfully claimed public insurances such as child benefit or orphan's pension. In most cases the judges ruled that Article 26 CRC could not be brought to bear, as the Netherlands has made a reservation to this article and does not acknowledge a child's independent right to social welfare provisions. Between 2007 and 2010, Article 27 CRC was invoked 54 times in Dutch court cases. Unfortunately, the Dutch judge does not award any direct effect to Article 27 CRC.

Recommendations

- Award direct effect to Article 27 CRC.

Homeless youths

In 2010-2011, a survey commissioned by the Ministry of Health, Welfare and Sport showed the existence of almost 9,000 homeless youths (Bureau HMM, 2011). The majority of the group consists of boys, and one-quarter to one-third is a girl. According to a Tilburg University survey, a quarter to half of these girls is pregnant or has a child. A total of around 16 percent of the homeless youths is a young parent (Jeeninga, 2010). Youths in a residential youth care institution or a judicial youth detention centre are particularly vulnerable to become homeless, especially when additional care or housing are not provided afterwards (also see chapter 2, paragraph 2.2).

Virtually all homeless youths have debts, mainly at telephone companies, health insurance companies, and at public transportation companies. The debts, amounting to between €3500 to €7000, are too high to pay off on a minimum youth wage, study grants, or youth welfare benefits. The welfare benefit for juveniles (€234 per month for an 18-year-old) is too low to pay for all the necessary costs of living, such as housing and health insurance.

Due to their lack of repayment capacity, youths are not eligible for the Dutch Debt Rescheduling Natural Persons Act (*Wet Schuldsanering Natuurlijke Personen*, Stb. 1998, 445). This means that youths with debts cannot be offered perspective towards a debt-free life. Many homeless youths cannot rely on their parents for housing or for assistance in case of financial problems.

Recommendations

- Limit the risk for youths of becoming homeless by supporting families, by arranging appropriate support and housing through municipalities for youths that leave a foster family, youth care institutions or judicial youth detention centres and by creating a regulation for debt assistance that helps youths to pay off their debts.
- Grant the right to a welfare benefit to youths who cannot rely on their parents.

Refugee children

A number of positive court rulings have occurred in recent years regarding the right to accommodation for children without a legal residence permit and the right to child benefit for undocumented parents. Unfortunately all these rulings have been revoked so that parents not residing legally in the Netherlands cannot receive child benefits for their children. This is the result of the 'Coupling Principle' (*Koppelingsbeginsel*) that couples social provisions to legal residence status (ABRVS 13 februari 2013, ECLI:NL:RVS:2013:BZ1256).

Recommendation

- Recognise the right of undocumented parents to child benefit.

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CHAPTER 4. EDUCATION, PUBLIC SPACE AND LEISURE TIME

4.1 EDUCATION

(Articles 28 and 29 CRC)

Introduction

Every child is entitled to good quality and suitable education, in order to develop their personality, talents, mental and physical abilities to the fullest possible extent. The Minister of Education, Culture and Science sees the overall development of children as a task for schools, and feels that the state has no further role in this. The Ministry bases its opinion on the freedom of education. This attitude is remarkable, given how the national government is intending to apply statutory obligations to schools in respect of tackling bullying.

Quality of education

The government is failing to adequately help schools offer pupils and students the best education opportunities. With reference to the freedom of education, the government also holds that it is not the government's task to assess the effectiveness of teaching methods. Schools are assessed in terms of their students' performance, however the quality of teaching methods is not assessed or evaluated, while the overall results can vary considerably (Inspectie van het Onderwijs, 2014). The NGO Coalition for Children's Rights finds that this makes the quality of education subordinate to the freedom of education.

The social and societal tasks of education are moreover made subordinate to its economic function, again invoking the freedom of education. Because of this importance of economics, the Dutch educational system has a strong emphasis on languages and mathematics. This emphasis, in combination with the stricter assessment of the schools' educational performance, may be at the expense of time and attention for personal development.

Most Dutch teachers have basic teaching skills, but there are significant differences within and between schools (Inspectie van het Onderwijs, 2014). Furthermore, more intricate skills, such as dealing with differences between students, are not always a matter of course. The NGO Coalition for Children's Rights finds this a worrisome trend, also as research has shown that pupils at risk (those with a low socio-economic status or those with learning or behavioural problems) benefit more than other pupils from having a good relationship with their teacher.

With regard to the quality, the shrinkage in education is also a cause for concern. In various regions in the Netherlands the population is decreasing, hence is the number of children in school. In 2020, there will be 140,000 pupils less in primary school than in 2012 (PO-raad, 2014). This implies a loss of employment positions and of resources for primary education. This will make it harder to preserve schools, and will put quality under pressure. Many schools must therefore cut costs, which has consequences for class sizes and for the supervision of both children and teachers.

Recommendations

- Ensure that teachers have more knowledge of and attention for the social and emotional development of children, as well as the backgrounds of and ways of dealing with pupils' learning and behavioural problems.
- Prevent the deterioration of the quality of education due to shrinkage and cutbacks.

At-risk students

According to the data of the Ministry of Education, Culture and Science, in the school year 2012-2013 as many as 27,950 students quit secondary education without a diploma (Ministerie van OCW, 2014). Students with a lower socio-economic background, from single-parent families, and students with a disability belong to the group at risk of quitting school without a diploma (Lusse, 2013; NJI, 2012;

Traag, 2012). The consequences of prematurely quitting education are various: less favourable job perspectives, a higher chance of criminal behaviour, and a higher chance of social problems (Ministerie van OCW, 2014). In 2007, the national government introduced the qualification obligation (*kwalificatieplicht*) to stop students from quitting education prematurely. Juveniles are obliged to attend school until the end of the school year in which he or she turns 16 years old. The qualification obligation takes effect after that, requiring youths between 16 and 18 years old to follow education until they have obtained a so-called basic qualification (*startkwalificatie*).

Since many years, segregation has been an issue in both primary and secondary education. This entails the concentration of children from a lower socio-economic background or with the same ethnic background in a certain type of education. In a segregated education setting, pupils and students do not have the opportunity to meet and work with children from different social and ethnic groups. This has consequences for the integration of various groups in society and on social cohesion (Forum, 2013). Making efforts at desegregation can improve the position of at-risk groups. However, the Minister of Education, Culture and Science holds that countering (ethnic) segregation in education is no longer a priority for the current government. Also at a local level, it appears that municipalities attach less priority to countering education segregation, while there are no indications that the resulting problems have diminished. Looking away will not solve the problem (Forum, 2013). It is therefore deemed advisable to once again make combating education segregation and arrears based on both ethnicity and socio-economic status a priority, so that at-risk pupils and students can enjoy the same opportunities as everyone else.

Recommendation

- Prevent education segregation and strengthen the position of at-risk groups in education.

Preschool and early childhood education

Preschool and early childhood education are meant to stimulate the development of young children from deprived population groups in such a way that it increases their chances of a successful school career, in part by preventing segregation at a young age (Inspectie van het Onderwijs, 2013). There are various programmes for preschool and early childhood education that mainly focus on language arrears but also devote attention to the child's social and emotional development. The offer and scope of preschool (for children aged 2,5 to 4 years old) and of early childhood education (for children aged 4 to 6 years old) have progressed significantly in the past 10 years. Since 2010, specific basic conditions for the quality of preschool education have been established by law (*Kamerstukken II 2012/13, 31 293, nr. 181*).

To identify and address development arrears in time, it is important that preschool and early childhood education cohere and connect with primary education. Focusing on 'continuing learning lines' from preschool to primary education offers the best approach to remedying development arrears. This can also contribute positively to the education performance of non-deprived children. Since 2012, the quality of preschool and early childhood education is inadequate. This is a serious problem, as children that enter primary school with language arrears often do not manage to catch up later (Inspectie van het Onderwijs, 2013). Especially pedagogical staff members perform poorly when it comes to stimulating language skills and the children's development. Virtually all evaluation studies identify this expertise by educational practitioners, in the sense of prior training and programme-specific further training, as an important condition for the effectiveness of preschool and early childhood education programmes. A slight improvement has become visible in 2013 (*Kamerstukken II 2012/13, 31 293, nr. 181*). Concerns continue to be voiced with regard to the parents' involvement with preschool and early childhood education, the scope of and guidance towards preschool and early childhood education, systematic care provision and the evaluation of results (Inspectie van het Onderwijs, 2013).

Recommendation

- Provide for a structured and sufficient offer of preschool and early childhood education that is available for all children, with and without arrears. Create frameworks to boost the professionalism of the educational teams that implement programmes of preschool and early childhood education, and develop continuing learning lines that connect to primary education.

Inclusive education

The NGO Coalition for Children's Rights welcomes the Inclusive Education Act (*Wet Passend Onderwijs*, *Stb.* 2012, 533) that went into force on 1 August 2014. From that date on, schools are obliged to offer each child a suitable place in school. The act moreover aims to accomplish that as many pupils as possible can attend regular education. According to the act, resources should be deployed especially for extra support, expertise development and adaptations so that each pupil can have its place in class.

The Inclusive Education Act initially focuses on children with learning and behavioural problems. Children without such problems and without a disability, but who are traumatised and therefore at risk, for instance due to migration, experiences of war, abuse, domestic violence, child maltreatment, stressful experiences such as the loss of loved ones and grief, are not addressed by this specific regulation. Accordingly, these children may fail to connect to the education system due to a lack of recognition and care (see also paragraph 3.1).

In the Netherlands, every year around 3000 children from primary and secondary education spend more than 4 weeks at home without education; the so-called 'home-stayers' (*thuiszitters*) (Jepma, Swart & Vergeer, 2011; De Kinderombudsman, 2013; Ministerie van OCW, 2012). Home-stayers are generally students with a disability and students with learning and behavioural problems. The Inclusive Education Act is also intended to reduce the number of home-stayers by holding the school directly responsible for the student's placement (De Kinderombudsman, 2013). It is uncertain whether the act will manage to create a place in school for every child that needs extra support, and whether it will manage to reduce the number of home-stayers.

For every child that is at risk of falling between two stools, the Inclusive Education Act requires that a suitable solution be found by the school attendance officer (*leerplichtambtenaar*), in collaboration with the parents and other educational institutions. However, it has emerged that it can take up to 8 months for a child to actually find a place in a special school. Also, if no place can be found at a school for special education, the school is absolved of its care duty. The Inclusive Education Act thus leaves many issues unresolved and offers schools means of evading their care duty. The NGO Coalition for Children's Rights finds this worrisome, and doubts whether schools will take their duty to provide a place in school for every child as serious as they should.

The NGO Coalition for Children's Rights furthermore feels that there is still a lack of proper information for students and parents and of training for teachers with regard to the possibilities offered by the act. This is however requisite, if the act is to be implemented adequately and effectively. It is furthermore important that school management and boards consult with each other as much as possible and collaborate effectively. Unnecessary bureaucracy as a result of the mandatory cooperation between schools must be avoided as much as possible.

Recommendations

- Ensure that schools take their statutory care duty seriously and actively seek a suitable solution for every child, so that the new Inclusive Education Act does indeed prevent home-stayers.
- Guarantee that collaborative ventures, school boards and school management provide for a good information supply to students, parents and teachers about the possibilities of the Inclusive Education Act.

4.2 PUBLIC SPACE AND LEISURE TIME

(Article 31 CRC)

Introduction

Playing is important to children's healthy development. In the Netherlands there is increasing attention for play and exercise in a healthy green environment. Still, the design of public space takes too little account of children and youths.

Exercise is healthy

Less than one-fifth of the 4 to 17-year-olds meets the Dutch Standard for Healthy Exercise (for children: 60 minutes of moderate exercise a day). The NGO Coalition for Children's Rights therefore finds it a positive development that the Ministry of Health, Welfare and Sport will, in spite of the cutbacks, devote millions of euros more to sports (*Kamerstukken II* 2013/14, 33 750-XVI, nr. 2). Play is also increasingly included in the growing attention for and debate about obesity and exercise.

Green schoolyards

The NGO Coalition for Children's Rights also finds it positive that in the redesign of schoolyards, increasingly a green environment is chosen rather than pavement bricks with some mounted play equipment. During schooldays, children spend multiple periods in the schoolyards. Primary school students have a weekly average of 5,5 hours of break time (Stuij et al., 2011). Children are in fact spending a larger amount of time in schoolyards as part of pre-school, in-between or after-school care. The schoolyard also plays a more important role in leisure time, as it is one of the few places in the neighbourhood where children can play independently.

There are indications that a lack of greenery in the living environment increases a susceptibility to sickness and depression (Van den Berg, 2012). People with 10 percent more greenery in their vicinity visit the doctor less, and are demonstrably less affected by migraine, depressions, asthma and diabetes. There are also more and more indications that greenery has a positive effect on children's psychological well-being (Van den Berg, 2012).

In 2014, the Ministries of Health, Welfare and Sport and of Education, Culture and Science launched the programme 'Healthy Schoolyards' (*Gezonde Schoolpleinen*). Over the course of 2014 to 2016, as part of this programme, 70 of the thousands of school in the Netherlands will be given a Healthy Schoolyard, to also serve as an example for other schools (Jantje Beton, 2013). The NGO Coalition for Children's Rights hopes that this programme will be continued after 2016.

Room to play

Children often spend their leisure time in their own neighbourhood. This makes them important and intensive users of public space. Nevertheless, the possibilities for them to play outside in a stimulating environment are limited. This is a matter of space and (physical and social) time. There is more concern for the interests of adults in public space (parking room, room for traffic) than for the interests of children, e.g. playing areas, safe routes (Cevaal et al., 2010). It is not self-evident that children should also be able and allowed to use informal space to play outside. Play is considered a luxury. Municipalities mainly invest in formal playgrounds, which children tend to consider dull (Jantje Beton, 2013). Public playgrounds have too little variety and are too little aligned with the needs of different age groups. Interesting playing areas for young children are also places where young parents meet. This is very important for the social cohesion in the neighbourhood, and for this there is hardly any attention in playground policy. Also, there is little to no attention for the play needs of children with disabilities.

Fearing liability claims, there is an increasing focus on the potential risks of children's play: a child might fall and hurt himself, for instance. As a result, responsibilities are increasingly made subject to legal regulations. Since some 10 years, annoyance regarding the sound of children playing outside is brought before the judge more often than before. The measure by the former Minister of Housing,

Spatial Planning and the Environment, as from 1 January 2010, to no longer consider the sound produced by children's play at child day care centres in determining the level of noise nuisance, is a positive step, though it does not affect the tolerance shown by neighbourhood residents. Research has shown that the nuisance of playing and loitering children and youths is not greater in the Netherlands than in other countries, but it does draw many more complaints here (CBS, 2014). Moreover, negative stereotyping of the youth-related noise makes the problem larger than it actually is. As a result, the focus is very much on a repressive approach to nuisance by children and youths, while it would be better to devote attention to positive youth policy, in which residents and youth engage in a dialogue about the living environment in a neighbourhood. An important part of such policy should be to have enough places in public space for children and youths. This will help reduce the actual nuisance and the negative stereotyping. The NGO Coalition for Children's Rights finds it positive that initiatives towards such a dialogue have been taken.

An important point of concern is that children's participation in designing public space is still minimal. A study found that just 8 percent of children have in some way had a voice in 'outdoor playing possibilities' in the neighbourhood, while 80 percent indicates that they would like to participate in the decision-making process (Qrius, 2010). Clearly, a greater role for children and youths in the design of public space in the neighbourhood is urgently needed.

Recommendations

- Encourage children's involvement in designing a creative and adventurous public space. This should take into account:
 - a. the different playing needs of children, also those of children with disabilities;
 - b. both formal and informal space in the neighbourhood;
 - c. not only the physical design of the places, but also their reachability, accessibility, and maintenance;
 - d. the play potential offered by nature-oriented playgrounds. Inform municipalities about the options in designing and managing such areas.
- Encourage positive youth policy in tackling nuisance caused by children and youths. Also involve the groups of youths causing the annoyance. Be careful not to stigmatise these youths.
- Preserve the child's right to risks, to gaining experience and to development. Avoid the legal regulations that hamper children's ability to play freely.

Playing and skills

It applies to play in general that there is too little attention for the positive effect that play has on the social, cognitive and motor development of children, as demonstrated by various studies. It is generally neglected that play in itself contributes and is important to a child's healthy development. There is little attention for the added value of play and for the relationship between play and development. There is, relatively, a much greater focus on education and learning performance. This should be complemented with attention for play as an essential element in children's development (De Kinderombudsman, 2013).

Recommendation

- Invest in knowledge transfer regarding the importance of play.

Cutbacks and unequal participation in cultural activities

The cutbacks are also impacting the cultural sector. The possibility for children to participate in cultural activities such as music lessons, drama or ballet is very much under pressure. Due to the cuts by the municipal authorities, centres for the arts and music schools are forced to raise the fees for courses. This makes it even more difficult for children to participate in for example ballet or music

lessons, especially for parents who have low income. Rules and regulations are moreover increasingly complex and differ from municipality to the next; as a result, there is a growing inequality in cultural opportunities for children in the Netherlands (De Kinderombudsman, 2013).

Recommendation

- Safeguard children's ability to participate in cultural activities.

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5.1 CHILD MALTREATMENT

(Articles 19 and 39 CRC)

Introduction

In the Netherlands, child maltreatment receives increasing attention, both socially and in terms of policy. Nevertheless, there is no visible reduction yet in child maltreatment. The NGO Coalition for Children's Rights deduces, on the grounds of prevalence figures, of the 2014 half-yearly monitor of the Child Maltreatment and Child Sexual Abuse Taskforce (hereinafter: the Taskforce) and other recent reports, that the current approach to child maltreatment is achieving too little results for children.

Prevalence of child maltreatment

According to the second national prevalence study, in 2010 there were 118,836 victims of maltreatment, or at least 3 per every 100 children, which averages out to one child per school class (Alink et al., 2011). Teachers, police officers, and staff members of the Child Abuse Advice and Reporting Centres (*Advies- en Meldpunten Kindermishandeling*, AMK), among others, have strong and substantiated concerns for these 118,836 children. The first national prevalence study of 2005 identified 107,000 children (Ijzendoorn et al., 2007), which means the number of maltreated children increased by 10 percent. Self-reporting by children points to significantly higher numbers. Neglect and (witnessing) domestic violence are particularly prominent (Alink et al., 2011).

The increase can likely be explained to some extent by a greater identification of cases. The number of advices provided and investigations by the AMKs increased year after year, stabilising after 2011 (Jeugdzorg Nederland, 2013). However, the number of investigated cases (65,340 in 2012) suggests that a large number of maltreated children remains out of the sight of the AMK.

In recent years, reports on the sexual abuse of children shocked society. In 2012, the Samson inquiry committee revealed that children placed in care since 1945 were not better protected against sexual abuse than other Dutch children. In foster care they were just as much subject to sexual abuse and in residential institutions the risk was twice as high. Children with a mild mental impairment even were 3 times as much at risk (Commissie Samson, 2012). The National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (*Nationale rapporteur mensenhandel en seksueel geweld tegen kinderen*) concluded in May 2014 that sexual violence against children is widespread and is not being tackled efficiently enough (Nationaal Rapporteur Mensenhandel, 2014).

Action plan to combat child maltreatment

In recent years, the government conducted several campaigns aimed at the general public on the topics of domestic violence and child maltreatment and on how to report (suspected) cases and where to go for advice. The government drew up an action plan to combat child maltreatment entitled *Kinderen Veilig 2012-2016*, which includes 24 actions (Ministerie van VWS, 2011). The above mentioned Taskforce was appointed in 2012 by the government and is tasked with the stimulation of progress on the identified actions to combat child maltreatment until 2016. To that end, the Taskforce assesses the progress of the action plan every six months. In the most recent monitor, of May 2014, the Taskforce concludes that the implementation of the actions, albeit with some delay, is progressing steadily. At the same time, the Taskforce notes that it remains unclear whether the 24 actions actually have an effect on children and parents. The Taskforce recommends investigating the effects in terms of reducing (the consequences of) child maltreatment, and to rearrange the action plan to create a coherent programme (Taskforce kindermishandeling en seksueel misbruik, 2014). The NGO Coalition for Children's Rights adopts these conclusions and recommendations.

Recommendation

- Monitor and investigate the effectiveness of policy and practice aimed at the prevention and combating of child maltreatment, both nationally and locally, and demonstrate the effects for children and their parents.

Legislation and policy

A number of important laws were introduced and enacted in recent years relating to the issue of child maltreatment. For instance, the right to speak for (the representatives of) underage victims in the Code of criminal procedure was expanded in 2012 (*Kamerstukken I 2011/12*, 33 176, nr. A). In 2007, a standard for the non-violent raising of children was included in legislation, but this legislative amendment was not accompanied by national campaigns to inform parents about (positive and) non-violent parenting (*Stb.* 2007, 145). Nor does this legislative amendment have an implementation plan.

A recent evaluation of the Temporary Domestic Exclusion Order Act (*Wet Tijdelijk Huisverbod*), that enables the possibility to temporarily remove a violent family member from his or her home, rather than the victim, shows that this measure is still rarely used in cases of child maltreatment and is primarily employed in cases of partner maltreatment (*Stb.* 2008, 421). This evaluation also shows that, in many cases, support for family members and especially for children is not (properly) initiated or sustained

(De Vaan, Timmermans & Homburg, 2013; De Vaan & Vanoni, 2011).

The NGO Coalition for Children's Rights is pleased with the arrival of the Reporting Code for Domestic Violence and Child maltreatment (*Wet Meldcode Huiselijk Geweld en Kindermishandeling*, *Stb.* 2013, 142). Under this law, professionals in 5 sectors do not have a legal obligation to report child maltreatment, but as of 1 July 2013 are required to work according to a certain procedure (a step-by-step plan) in cases of suspected child maltreatment. An implementation plan for this has been carried out. The most recent state of affairs will be discussed below under 'Professionalization of staff'.

In February 2014 the Youth Act was adopted, which delegates the responsibility for tackling child maltreatment almost entirely to the 403 municipalities, as from 1 January 2015. The municipalities will have a great amount of discretionary power with regard to the prevention of child maltreatment, the investigation of suspected and reported child maltreatment, implementation of child protection and the provision of care and support to maltreated children (*Stb.* 2014, 105). The NGO Coalition for Children's Rights is concerned that this decentralisation will lead to local differences in quality, with preventive measures and the availability and quality of support not being equally guaranteed throughout the country (Raad van State, 2014; TSJ, 2014; CPB, 2013; Algemene Rekenkamer, 2013).

Also see: Chapter 2, paragraph 2.2.

Recommendation

- Ensure that preventive measures and the availability and quality of support are equally guaranteed throughout the country.

Child and youth participation

It is important to children and youths that adults talk to them about the prevention of child maltreatment. This is made clear for example through the Child Voice project, which was carried out in 2012-2013 by *Stichting Alexander* (Jurrius, Uzozie & Maas, 2013). The children participating in this project indicate that adults are often afraid to discuss child maltreatment with them. On 18 November 2013, the Youth Taskforce Child Maltreatment (*Jongerentaskforce Kindermishandeling*) was created on the initiative of the Augeo Foundation. This taskforce presented a panel study involving 800 school students, conducted by NJR (The Dutch National Youth Council), which showed that only 19 percent of youths in school have been informed about child maltreatment.

Youths indicated to have a preference for classes at school centred on this theme (NJR, 2013). The youths in the Youth Taskforce Child Maltreatment also believe that the role that children and youths could play in identifying child maltreatment is still insufficiently acknowledged and underutilised. The NGO Coalition for Children's Rights agrees: children and youths should be much more actively involved in the prevention and combating of child maltreatment. The 2014 study by the Dutch Children's Ombudsman into the prevention policies of municipalities also showed that there is still much to be achieved in this area. The results of this study demonstrate that only one out of 7 municipalities has included the view of children and youths in their policies (De Kinderombudsman, 2014).

Recommendation

- Involve the view of children and youths in the prevention and combating of child maltreatment.

Prevention of child maltreatment

The results of the 2014 study into the child maltreatment prevention policies of municipalities by the Children's Ombudsman shows that three-quarters of the municipalities do set out specific policy in writing, but that important preventive measures are lacking. The Children's Ombudsman studied the municipal prevention policies in respect of 10 preventive measures. These measures include: providing information to all young parents about non-violent parenting and the crying behaviour of babies; screening of pregnant women and implementation of preventive support in cases with a high risk of child maltreatment; use of protocols for conversations and screening lists in youth health care, informing children about child maltreatment, informing all citizens as to where to obtain advice if they suspect child maltreatment; and (further) training of professionals. The ten measures also include the assignment of parenting support and providing specific care and support to children following domestic violence. The results of the study show that just 2 percent of the municipalities have incorporated all these measures in their policies, while the prevention of child maltreatment has been the municipalities' responsibility for years. Furthermore, the results demonstrate that all but a few of the municipalities have no knowledge of the range and effectiveness of their prevention policies. They generally also have no insight in the scope and effects of the individual measures (De Kinderombudsman, 2014).

Due to limited monitoring and management and the increase of the municipalities' responsibilities as of 2015, the Children's Ombudsman urges municipalities to strengthen their leading roles. He also advises the municipalities to pursue a child-safe policy (*kindveilig beleid*). Such a policy must include at least the ten measures studied by the Children's Ombudsman. The NGO Coalition for Children's Rights agrees with these recommendations by the Children's Ombudsman.

The NGO Coalition for Children's Rights believes that without direction from the national government, the quality and speed at which these preventive measures are implemented and performed will not sufficiently improve, leading to a failure to actually reduce the unacceptably large scale on which child maltreatment takes place. It is a cause for worry that there is still no integrated, cohesive and coordinated approach to child maltreatment. The NGO Coalition for Children's Rights emphasises that the national government must continue to play a strong role in the prevention and combating of child maltreatment – an obligation which is furthermore imposed upon the government by the UN CRC. A (programme) Ministry for Youth and Family, which was unfortunately dissolved in 2010, could perform this role.

Recommendations

- Provide for an integrated, cohesive and coordinated approach to child maltreatment, both nationally and locally.
- Ensure that municipalities work on prevention policies that minimally include the ten preventive measures proposed by the Children's Ombudsman; that devote extra attention to risk factors; and have a measurable effect for children and parents.

Extra attention for risk groups

Child maltreatment is usually caused by an accumulation of issues such as poverty, psychiatric disorders or unemployment on the part of (both) parents. Important risk groups are asylum-seeking children, care avoiders and parents with a disability. These groups of children receive not enough attention in studies and in policy, both at national and local levels (Samenwerkend Toezicht Jeugd, 2013a and 2014). The Children's Ombudsman's 2014 study into the prevention policies of municipalities revealed, for example, that more than half of the municipalities do not know the size of these risk groups and do not award these groups any specific attention in their child maltreatment prevention policy (De Kinderombudsman, 2014).

Also at the national level, there is no clear overview of the risk groups. In comparison to knowledge concerning risk factors for child maltreatment, the prevalence study held every 5 years does not pay sufficient attention to parent characteristics, which is the strongest predictor of child maltreatment (Stith et al., 2009). There is no explicit attention for, for example, parents with a mild mental disability, psychological or substance abuse problems and for households with intimate partner violence. This means that the study may give a distorted image, as important risk factors are absent from the study design. This makes it difficult to apply policy in situations where a preventive effect may be expected (Letter of the NGO Coalition for Children's Rights to the Ministry of Health, Welfare and Sports and to the Taskforce in April 2014).

In practice, a link between the combating of risk problems and the combating of child maltreatment is lacking. For instance, poverty policy and policy on child maltreatment and domestic violence are separate policy fields, while a more integrated approach seems advisable (Steketee, Tierolf & Mak, 2014). Based on knowledge of risk factors, the Kid's Count (*Kinderen in Tel*) report showed that greater poverty related to more reports of child maltreatment – a worrying situation considering the 10 percent increase of the number of children living in poverty (Steketee, Tierolf & Mak, 2014).

Recommendation

- Include all important risk factors and risk groups, including parent characteristics, in the next 5-yearly national study on the prevalence of child maltreatment.

Professionalisation of staff

Research into the implementation of the Reporting Code for Domestic Violence and Child Maltreatment (*Stb.* 2013, 142) shows that some sectors are well on track (e.g. youth care), but that others are lagging behind (e.g. education) (Inspectie Jeugdzorg, 2013; Veldkamp 2012; Doeven, 2008). In several healthcare sectors, the reporting code is still not adequately implemented (Inspectie voor de Gezondheidszorg, 2013 en 2010). Many professionals feel insufficiently equipped to identify child maltreatment and to act in case of suspicion (Linders, 2012). The NGO Coalition for Children's Rights is very concerned about this, all the more so because government efforts in this regard are clearly insufficient.

However, there are also promising developments and supporting policy efforts from the government. Among others, they introduced Child Check (*Kindcheck*) as part of the Reporting Code for Domestic Violence and Child maltreatment, which makes it compulsory for professionals to act in accordance with the reporting code if the adults with a parenting role show any signs that are a cause for concern (even in the absence of such signs from children). Measures have also been taken to structurally include attention for child maltreatment in professional degree education (*Kamerstukken II* 2012/13, 33 400-XVI, nr. 157). It will be important to monitor whether these efforts lead to structural changes in practice over the coming years.

Recommendations

- Ensure that professionals in all relevant sectors use the reporting code.
- Ensure structural attention for child maltreatment in professional training and the continued professional training of staff.

Reporting and investigating suspected child maltreatment

In order to achieve an integral (family) strategy to combat domestic violence, the AMK will merge with the domestic violence support centres (*Steunpunt Huiselijk Geweld, Kamerstukken II 2013/14, 30 598, nr. 428*). How this organisation will operate will be worked out in detail in 2014 (Pattje, 2013). The NGO Coalition for Children's Rights finds it important to measure whether this fusion does indeed lead to the intended integral approach to child maltreatment. In 2011, the Health Council of the Netherlands (*Gezondheidsraad*) advised that a multidisciplinary investigation should be carried out in cases of suspected child maltreatment, with attention for the child's development, the child's and the parents' mental and physical health, safety and environmental factors (*Gezondheidsraad, 2011*). The NGO Coalition for Children's Rights finds it worrisome that this advice is still left a side. All children who become victims of child maltreatment should have access to such multidisciplinary assessments.

Support and care for victims of child maltreatment

The NGO Coalition for Children's Rights is pleased with the increasing attention for family-oriented and multidisciplinary support in cases of child maltreatment, but also notes that the current support offered still suffers from major problems in terms of quality and capacity. The NGO Coalition for Children's Rights therefore considers it remarkable that the abovementioned advice issued by the Health Council of the Netherlands regarding the provision of support in cases of child maltreatment has yet to be converted into guidelines for municipalities or quality requirements for care providers. In the action plan to reduce child maltreatment Children Safe 2012-2016 (*Kinderen Veilig 2012-2016*), barely any attention is devoted to improving the support available to victims of child maltreatment, while the situation is still far from one where all children and families who need support or care actually have access to multidisciplinary intervention. In cases where these forms of support and care are available, their quality often is inadequate. For instance, in current multidisciplinary approaches, several disciplines are often absent. In all trial settings where multidisciplinary initiatives are investigated, there was no cooperation with schools (De Jong & Huurderman, 2013). Collaboration between care professionals and the police could also be improved to ensure the best interest of the child is used as a primary consideration when assessing whether or not to involve criminal law. In practice, child maltreatment is seldom reported to the police. It must be said in this regard, however, that according to report and prevalence figures (Jeugdzorg Nederland, 2013; Alink et al., 2011), most cases of child maltreatment concern neglect, which is a broad concept that usually does not constitute an offence. Recent reports are also not optimistic. Support programmes are often compartmentalised and fragmented. Families are often not followed throughout the entire intervention process and disappear from view. As a result, there is little insight into the effectiveness of support (Samenwerkend Toezicht Jeugd, 2013a en 2014). The majority (60 percent) of children who experience domestic violence do not receive care and support (De Vaan, Timmermans & Homburg, 2013; De Vaan & Vanoni, 2011). The results of investigations into domestic violence in the 4 largest cities of the Netherlands reveal that it concerns serious, frequent and long-term partner maltreatment. The children in these investigations felt emotionally unsafe, and 33 percent of them were traumatised (Tierolf, Lünemann & Steketee, 2014). Furthermore, this investigation showed that after a year and a half, serious violence still occurred in half of these families. The fact that, with or without support, child maltreatment often goes on for too long also becomes clear from the high percentage (40 percent) of recurring reports to the AMK (Polak et al., 2014). The National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (*Nationale Rapporteur Mensenhandel en Seksueel Geweld tegen Kinderen*) has drawn up a list of impediments to providing care to children following sexual violence (Nationaal Rapporteur, 2014). Experts also indicate more attention has to be paid to suitable and effective care and support for children who have been neglected and emotionally maltreated (see ZonMw NESDA-project and the appeal of Taskforce member professor Alink on the website of the Taskforce).

Following the government's efforts to improve the identification and reporting of child maltreatment by professionals, The NGO Coalition for Children's Rights would like to see the government strive for

the improvement of the accessibility of and guidance of victims towards appropriate support. Specific measures are lagging behind, while it becomes increasingly clear how seriously inadequate the current provisions are.

Recommendation

- Guarantee that everywhere in the Netherlands, children and parents in need have access to multidisciplinary investigation and appropriate, multidisciplinary and family-oriented support in cases of child maltreatment, with adequate case management.

5.2 JUVENILE CRIMINAL LAW

(Articles 37 and 40 CRC)

Introduction

A significant decrease in juvenile crime has been evident in the Netherlands since 2008 (Van der Laan & Blom, 2011). As a result, the number of juvenile criminal trials has significantly diminished. Furthermore, the police and judicial authorities have clearly concentrated on taking a pedagogical approach to child suspects and convicts. More alternatives to prosecution and the deprivation of liberty were developed, such as behavioural interventions and the police taking special measures for minors in police cells. The number of minors in judicial youth detention centres has decreased from 2,557 in 2009 to 1,520 in 2013 (figures provided by the Ministry of Security and Justice, DJI: figures sent via email to Defence for Children in March 2014). As a result, 6 detention centres became redundant and have been closed (Sectordirectie Dienst Justitiële Inrichtingen, 2010). Two more centres are due to close down within 2 years. The NGO Coalition for Children's Rights recognises that juvenile criminal law policy is more in compliance with the goals of the UN CRC, including the principle of last resort. Nevertheless, concerns remain to exist with regard to the legal position of minors in juvenile criminal law and the holding of minors in pre-trial detention in practice.

Reservation to the UN CRC

It is possible in the Netherlands to prosecute minors of 16 or 17 years old using adult criminal law, provided that a number of legal criteria have been satisfied. The Netherlands has made a reservation for this purpose, with regard to Article 37c CRC. This reservation has remained in force despite earlier and repeated requests made in 1999, 2004 and 2009 by the UN Committee on the Rights of the Child to withdraw this reservation.

Adolescent criminal law

Adolescent criminal law came into force in the Netherlands on April 1, 2014 (*Stb.* 2013, 485). The new law offers advantages for offenders over 18 years old, because it allows for persons to be prosecuted under juvenile criminal law up to 23 years old. A positive aspect is that the accompanying guideline directly refers to the UN CRC (*Stcrt.* 2014/8284). However, the new law does not offer any advantages for minors and even leads to a number of violations of children's rights. Adolescent criminal law and the accompanying guideline make it clearer than before that 16-year-olds and 17-year-olds can be prosecuted under adult criminal law in cases of very grave offences (such as homicide). In such cases, it is expected that treatment under juvenile criminal law will offer insufficient means of ensuring the safety of others. Adolescent criminal law also provides that the so-called PIJ-measure (*PIJ-maatregel: Plaatsing in een Inrichting voor Jeugdigen*; placement in a judicial youth detention centres: a treatment measure under juvenile criminal law including deprivation of liberty) can afterwards be converted into a hospital order (*TBS-maatregel: terbeschikkingstelling*; a treatment measure under adult criminal law including deprivation of liberty). A hospital order can subsequently be indefinitely extended by the judge. This implies that minors aged 12 years and older, on whom a PIJ-measure is imposed, may spend the rest of their lives in a penitentiary institution.

Furthermore, judges may no longer only impose a community punishment order in cases of serious violent and sex offences. They may only do so combined with a (suspended) measure of deprivation of liberty. This is a very undesirable change regarding the pedagogical nature of juvenile justice. Juvenile judges can no longer take into account the child's individual circumstances and best interest (Article 3 paragraph 1 CRC) when considering a decision to deprive minors of their liberty, for it is predetermined by law that a measure of deprivation of liberty will be imposed.

Recommendations

- Withdraw the reservation to Article 37 CRC which allows for 16-year-olds and 17-year-olds to be prosecuted under adult criminal law. Apply the juvenile criminal law to all minors (12 to 18 years old) and restrict the application of adolescent criminal law to young persons over 18 years of age.
- Ensure the decision to deprive minors of their liberty is a measure of last resort that is always reviewed by a judge, as well as in cases of serious violent offences and sex offences.
- Ensure that it is not possible to convert a PIJ measure (placement in a judicial youth detention centre) into a hospital order (a measure for adults that may last for a lifetime).

Minors in police cells

The Netherlands fails to observe the UN CRC with regard to the legal position of minors in police cells. Approximately 35,000 minors are interrogated by the police annually. Approximately 7,000 of them are taken into police custody, most of whom are held overnight or longer (police figures from the GIDS Database: sent by the Police via email to Defence for Children in March 2014). A study by Defence for Children demonstrated that minors in police cells are hardly treated differently from adults. The age of juvenile suspects is insufficiently taken into account and there are insufficient efforts made towards a child-oriented approach. The legally permitted term of custody in a police cell is far too long, being at its maximum 16 days and 15 hours. With few exceptions, there are no separate legal provisions and separate protocols applying to juvenile suspects. Research shows that Dutch law, policy and practice do not conform to the UN CRC (Berger & Van der Kroon, 2011). The identified issues are:

- Minors under 12 years old (the legal age at which one is criminally responsible) have no right to a lawyer when being interrogated by the police.
- By law (Article 15 of the Judicial Youth Detention Centres Framework Act (*Beginselenwet Justitiële Jeugdinrichtingen*, Stb. 2000, 481), juveniles above 12 years old may, depending on their age, be held in police cells for a maximum of 9 days or 16 days and 15 hours. This is longer than in other European countries, where minors are sent home or transferred within 24 hours. The law thus insufficiently ensures observance of the principle of "shortest appropriate period of time".
- During the police custody phase, specific criteria concerning the deprivation of liberty of juvenile suspects are absent. The interests of the investigation outweigh the interests of the child during this phase. The Netherlands is thus acting in breach of the principle of last resort.
- Juveniles are held in the same cell blocks as adults.
- Police staff and public prosecutors are insufficiently trained to work with juveniles.
- There is a lack of focus on alternatives to police custody. Options for mediation and restorative justice are minimal during this phase. House arrest with supervision or ankle monitors is not applied sufficiently.
- Juveniles receive insufficient comprehensible information from the police as to what to expect and what their rights are.
- There is no specific regulation to prohibit the use of violence in juvenile cases, unless a juvenile poses a danger to himself or to others.
- Police cells are often cold, unclean and not child-friendly.
- The position of juveniles in police cells is monitored insufficiently. Separate assessment criteria are absent. Complaints of juveniles are not registered separately.
- The legal position of juveniles is also not warranted enough with regard to waiting cells in courts and the transportation to those cells.

In 2013, in reaction to the conclusions and recommendations of the research report by Defence for Children, the police introduced 14 special measures for juveniles in order to improve policy and practice regarding juveniles in police cells (*Kamerstukken II 2011/12, 24 587, nr. 471*). For instance, a separate custody officer is appointed at every shift who has special attention and responsibility for juvenile arrestees; a doctor is informed if a juvenile with behavioural problems has to spend the night in a police cell; youth literature has been made available and parents are permitted to bring study material. The NGO Coalition for Children's Rights is pleased with the steps the police have thus taken, however this has not solved all the problems listed above. Much more attention is necessary for a separate child-oriented policy and further specialisation of police staff. It is important in that regard that members of supervisory commissions understand juveniles and know what legal provisions are applicable.

Recommendations

- Shorten the legally permitted period of time juveniles may be held in police cells.
- Pursue child-oriented policy for juveniles in police cells, including an expansion of the specific regulations for juvenile suspects.

Handling of cases by the Public Prosecution Service: lack of legal safeguards and specialised public prosecutors

Since 2012, juvenile criminal cases can be handled faster by the police or the public prosecutor. The introduction of the so-called *ZSM* approach (As Selective, smart, together, society-focused as Possible, *Zo Selectief, snel, slim, samen, samenlevingsgericht Mogelijk*) gives the Public Prosecution Service more extensive powers. The purpose is to condense the process of judging, sentencing and enforcement (*Kamerstukken II 2011/12, 29 279, nr. 126*). The NGO Coalition for Children's Rights is concerned about the consequences for the independence of justice, the principle of the use deprivation of liberty as a measure of last resort, scrupulousness and expertise, legal safeguards for juveniles including access to legal aid for minor offences and the focus on handling as many cases as possible without involving the courts and without judicial registration.

Within the framework of accelerated proceedings, juvenile suspects can be held in custody for 17 days until the *ZSM* hearing is held, which may endanger the use of the principle of “adjourn, unless” (*schorsen tenzij*) that applies for juveniles. Handling cases via the Public Prosecution Service allows a public prosecutor to not only prosecute juveniles who are suspected of an offence with a maximum of 6 years in prison, but also to impose a fine or community punishment. This is not aligned with the requirement of independent authority or judicial body. Furthermore, the prosecutor who makes the decision is often not specifically trained to handle youth cases. This may mean that he or she does not have enough knowledge about special youth programmes and settlements. Juveniles who have been interrogated for lighter sentences and who may qualify for settlement through the Public Prosecution Service are, moreover, not always assisted by a lawyer. Finally, despite the fact that the settlement via the Public Prosecution Service is imposed without involvement of the courts, the juveniles in question are nevertheless judicially registered. This registration can become an impediment later on when trying to obtain a Certificate of Good Conduct (*Verklaring Omtrent het Gedrag*; *VOG*), or may form a reason to register a DNA profile in the DNA data bank of the Netherlands Forensic Institute.

Recommendations

- Provide for sufficient specialised staff among police and public prosecutors who are trained to work with juveniles.
- Ensure that juveniles have access to an independent authority or judicial body when decisions are taken regarding their sentencing.

Pre-trial detention

The percentage of children currently held in pre-trial detention in judicial youth detention centres is too high. Recent figures from the Custodial Institutions Agency (*Dienst Justitiële Inrichtingen*, hereinafter: DJI) of the Ministry of Security and Justice show that 74 percent of all juveniles who spend time in a judicial youth detention centre are in pre-trial detention (figures provided by the Ministry of Security and Justice, DJI: sent to Defence for Children via email in March 2014). In a number of these cases, the length of the pre-trial detention is equal to that of the total sentence. In various regions, logistical problems hamper attempts to use night detention as an alternative. For example, the distance between the judicial youth detention centres, often located outside cities, and schools is often too large for juvenile offenders to arrive at school in time. According to professionals, in a number of cases using alternatives to the deprivation of liberty can be delayed as a consequence of waiting lists for treatment programmes or for the performance of personal tests.

Recommendation

- Ensure that alternative measures for the deprivation of liberty during the period of pre-trial detention are more accessible and available nationally.

Reasonable term in juvenile cases

In juvenile cases, the maximum term of six months within which a court decision has to be given, is regularly exceeded. In 2012, a final judgement was given within 6 months in just 56 percent of cases. The evaluation of the ZSM approach also shows that terms are too often exceeded by too much time in juvenile cases. Some of the juveniles who spend more than 6 months awaiting a court decision are still in pre-trial detention and reside in judicial youth detention centres during that time. With regard to exceedance of the reasonable term – in a few cases by as much as 2 or 3 years – the Supreme Court (*Hoge Raad*) of the Netherlands determined that a reduction of the sentence may be applied, but it is not possible to bar the prosecution (HR 17 juni 2008, ECLI:NL:HR:2008:BD2578 and HR 30 maart 2010, ECLI:NL:HR:2010:BL3228). This means the prosecution cannot be withdrawn, that the accused will be prosecuted regardless of delay and will be subject to judicial registration in the event of conviction. This is in breach of the UN CRC, which provides that in juvenile cases a decision must be given by a competent, independent and unprejudiced authority or judicial body without delay (Article 40(2)b III CRC).

Recommendation

- Ensure that juveniles need not await a court decision for more than 6 months.

Alternatives

The Dutch government can do more to ensure a coherent range of alternatives to detention and diversion (out-of-court settlement). Much has been invested in alternatives to detention during the past 5 years, for example the approved behavioural interventions. A downside is that the alternatives to detention are not all nationally available and therefore are not being fully exploited. During the pre-trial detention phase, especially, it is problematic that not all police officers and public prosecutors are specialised in and have expertise on juveniles, resulting in sufficient awareness of the available alternative programmes, how to apply the “adjourn, unless” (*schorsen tenzij*) rule and how and when collaboration with youth care is possible (Berger & Van der Kroon, 2011).

Recommendation

- Make alternatives to deprivation of liberty available nationally and ensure that police officers and public prosecutors are aware of the available alternative programmes and the manner in which they should be used.

Restorative justice and mediation

Restorative justice and mediation have too weak a base in Dutch juvenile criminal law. The statutory provision that was introduced in 2012 (Article 51 of the Code of Criminal Procedure) needs to be explained and elaborated in detail with regard to juveniles. For this, it is also necessary that mediation and restorative justice options are available everywhere in the country and that persons who work with juveniles in the criminal justice system are aware of this. At present, mediation and restorative justice meetings can only be offered to the victim if a juvenile is referred to the Victim in Focus Organisation (*Stichting Slachtoffer in Beeld*) or to Halt (a body organising out-of-court settlements offered by the Public Prosecution Service to juvenile offenders involving community service or educational tasks). In Belgium and Germany the application of mediation and/or restorative justice is much more included in law and incorporated in practice. In these countries, there is also a wider range of options that is specifically tailored to juveniles. As a result, more cases can be solved in this way in those countries.

Recommendations

- Publish a specific elaboration of Article 51 of the Code of Criminal Procedure for the application of restorative justice in juvenile cases.
- Provide for a nationally available range of restorative justice interventions for juveniles and ensure professionals in the criminal justice system working with minors have up-to-date knowledge on the possibilities of restorative measures.

Living environment in judicial youth detention centres

The situation in judicial youth detention centres has improved over the past period. Research results show that the living environment of a judicial youth detention centre improves significantly when group leaders manage to win the juveniles' trust instead of responding with aggression and punishment. In order to achieve a safe and positive living environment, sufficient attention must be paid to the support and training of group leaders and pedagogical workers. In recent years, judicial youth detention centres have been investing more in the working methods of staff and the treatment of juveniles, through programmes such as YOUTURN and TOPS (Van der Helm, 2011).

Despite these positive developments, the NGO Coalition for Children's Rights notes that in judicial youth detention centres, juveniles who have mild mental disabilities or psychological problems or traumas resulting from child maltreatment or domestic violence, are still insufficiently recognised (Lahlah, 2013; Teeuwen, 2012). More attention and specifically tailored solutions are required to adequately address these specific problems.

Recommendation

- Provide for enough attention and tailored solutions for juveniles in judicial youth detention centres with specific problems.

Data collection

The Ministry of Security and Justice collects and publishes figures about, primarily, the number of children staying in police cells and judicial youth detention centres. Figures on the duration of their stay, complaints regarding the conduct of and use of violence by staff, the time spent in isolation cells and the treatment of juveniles are not centrally collected and/or published. In the opinion of the NGO Coalition for Children's Rights, evaluation on the basis of Articles 37 and 40 CRC is hardly possible and more insight is required with regard to the conduct of staff, treatment of juveniles and the application of coercive measures.

Recommendation

- Ensure, with regard to proper monitoring, that sufficient data are collected and are available regarding the attitude of and conduct of staff towards juveniles and the application of disciplinary measures in police cells and judicial youth detention centres.

Twelve and thirteen-year-olds

In 2013, 27 children of 12 and 13 years old resided in judicial youth detention centres. For these children, incarceration is especially damaging. Twelve and 13-year-old children do not yet fully comprehend what actually happens in a legal setting (Rap, 2013). Also, the Guideline and framework for the prosecution of juveniles and adolescents, including Halt sentencing indications (*Richtlijn en kader voor strafvordering jeugd en adolescenten, inclusief strafmaten Halt, Stcr.* 2014, 8284) assumes that juveniles younger than 14 years old are only capable of independently assuming responsibility for their acts to a limited extent. In the prosecution and sentencing of these youths, this must be taken into account, and a cautious approach is therefore appropriate. With regard to deprivation of liberty, this means that, for this group of children, alternatives to pre-trial detention should always be used, unless the circumstances prohibit it.

Recommendation

- For 12 and 13-year-old juveniles, introduce the rule that they in principle cannot be incarcerated in a judicial youth detention centre and ensure that specifically for these children a good range of alternatives exists to deprivation of liberty.

Aftercare

Juveniles who seek to continue with education or work following time spent in judicial youth detention centre often encounter difficulties. Providing aftercare to these juveniles is mandatory, but in practice the period of aftercare is often too short and support and care following termination of the aftercare programme is insufficient (Bijleveld, 2013; reportage VARA Ombudsman, 2010; reportage Argos radio 1, 2014). The support of these youths in their reintegration into society should be provided more rigorously by care providers in the municipalities where these youths live. The NGO Coalition for Children's Rights is concerned as to whether municipalities will assume responsibility enough for aftercare and youth rehabilitation and whether they will sufficiently improve aftercare, following the introduction of the Youth Act on 1 January 2015.

Recommendation

- Provide for a safety net in the municipality to which youths return once the legal period of aftercare expires.

Certificate of Good Conduct (*Verklaring Omtrent het Gedrag*)

The criminal data of juveniles are kept in the Criminal Records Register (*Justitiële Documentatie Register*). Registration in this register means that the juvenile has a criminal record (*strafblad*). Such registration may last for as much as 30 years. In principle, the review period for juveniles is 2 years. Registration of sexual offences is life-long, however. Criminal registration may be a reason to refuse to issue a Certificate of Good Conduct (*Verklaring Omtrent het Gedrag*, VOG). The immediate result is that youths whose request for a VOG is denied are less likely to be admitted to a wide range of degrees, study programmes, internships and jobs. This reduces their chances at reintegration. It remains unknown how many young people therefore do not even apply for a VOG, fearing that their application will be denied anyway (Hokwerda & Kurtovic, 2014).

Taking DNA samples from juveniles

The annual report of the Netherlands Forensic Institute (*Nederlands Forensisch Instituut*: NFI) shows that in 2013, 22,649 young persons were registered in the DNA database due to a conviction that occurred in their youth (NFI, 2013). The DNA Testing Convicted Persons Act (*Wet DNA-onderzoek bij veroordeelden*) does not – unjustly so – distinguish between juveniles and adults (Stb. 2014, 465). The option to take a DNA sample was originally meant for cases involving grave violent and sexual crimes. Since 1 May 2010, public prosecutors have wider powers with regard to DNA sampling of convicted persons, without the obligation to provide proper reasons to motivate this decision. An order to take a DNA sample may be issued for crimes for which pre-trial detention is permitted, which can include relatively minor offences such as breaking a window, stealing a telephone, or being involved in a fight. The Council for the Administration of Criminal Justice and Protection of Juveniles (*Raad voor Strafrechtstoepassing en Jeugdbescherming*: RSJ) and the Dutch Children's Ombudsman have remarked that juveniles who have committed a punishable offence are, in comparison to adults who have committed a similar crime, more often sentenced to community service, which obliges them by law to issue cellular material. Adults in similar criminal cases are more often sentenced to a fine, which does not oblige them to issue cellular material (RSJ, 2011b; De Kinderombudsman, 2013). Juveniles can only object to the registration of their profile in the DNA database after their DNA has been sampled. These objections are rarely upheld (*Aanhangsel van Handelingen II* 2010/11, nr. 3219).

Recommendations

- Ensure that cases can be settled out of court, without this leading to criminal registration.
- For Certificate of Good Conduct (VOG) applications, create separate rules to restrict the possibility to review criminal registration following a sexual offence committed while underage.
- Include a separate provision in the DNA Testing Convicted Persons Act that regulates the legal position of juveniles, in order to guarantee that no DNA samples are taken in juvenile cases unless there is a pressing reason to do so, due to the nature of the crime or the extraordinary circumstances under which the crime was committed.

5.3 CHILDREN IN IMMIGRATION LAW

(Articles 10, 20 and 22 CRC)

Introduction

The Dutch government treats immigration as a problem that must be combated, and is doing everything it can to substantially suppress immigration. The NGO Coalition for Children's Rights is concerned about the legal position and observance of the UN CRC with regard to immigrant children in general and children without residence permits (hereinafter: undocumented children) in particular.

Entry and procedure

Application of the UN CRC

The best interests of the child are rarely taken into account in residency procedures. During asylum procedures, especially, the Immigration and Naturalisation Service (*Immigratie- en Naturalisatiedienst*, hereinafter: IND) does not consider the rights of children. In immigration law jurisprudence, children's rights also seem to be of subordinate importance. Appeals to children's rights are rarely granted (Reneman, 2011; Pulles, 2011).

Furthermore, current practice has too little attention for the individual assessment of the situation of children: will the child be able to safely return to his or her country of origin? In making this assessment, attention should be paid not only to whether there is a risk of female circumcision or of being recruited as a child soldier, but also to other factors relevant to the child, such as safe and

suitable education, housing, medical care, youth care and child protection. Currently, government reports on the human rights conditions in foreign countries leave insufficient room for child-specific information.

Best interests of the child

The concept of the 'child's best interests' often proves difficult to assess in practice. Professionals often have insufficient knowledge of the UN CRC and the implementation of Article 3, paragraph 1 CRC. Many of them also lack the skills to use the tools developed so far to substantiate the child's best interests. A point of concern is that a child's development is often damaged on the long term as a result of tensions and uncertainties involved in the often lengthy immigration law proceedings. Case law of the Administrative Jurisdiction Division (*Afdeling Bestuursrechtspraak*) of the Council of State (*Raad van State*, hereinafter: 'Division') often refers to the notion that the best interests of an individual child need not be taken into account, because the best interests of children were taken into account during the creation of immigrant policy. The Division has long maintained their position that Article 3 CRC has no direct effect. Nowadays it states that Article 3 CRC has direct effect, to the extent that in all measures involving children their best interests have to be taken into account (ABRVS 7 februari 2012, ECLI:NL:RVS:2012:BV3716). The Division however merely assesses whether the minister has 'heeded' the best interests of the child enough, not whether or not these interests have been properly attended to.

Application of the principle of non-discrimination

Different courts have different ways of dealing with the effect of Article 2 CRC. This leads to legal uncertainty and creates a glance of arbitrariness. Contrary to the scope of Article 2 CRC, and the explanation of this article by the UN Committee on the Rights of the Child, the Division argues in its rulings that the discrimination of children, with or without a residential permit, is allowed. The Central Appeals Tribunal (*Centrale Raad van Beroep*), the highest authority for social welfare matters, does however regularly apply Article 2 CRC in cases involving children without residence permits.

Recommendations

- Explicitly include in immigration policy that for every decision that affects children, an individual, knowable and substantiated best interests of the child determination must be made, and that the best interests of the child must always be a primary consideration.
- Provide for sufficient training of the professionals concerned (including interviewers and decision makers, guardians, immigration law judges) in the use of the practical assessment instruments that have been developed to determine the best interests of the child.

Hearing of children

The guidance of children in preparation of an interview with immigration authorities is often too short and too chaotic for children. In addition to the medical examination prior to the hearing of the child, an examination should be performed by a clinical psychologist for children to identify problems likely to occur during the hearing in advance (Kalverboer & Zijlstra, 2008). In practice, minor inconsistencies in a child's statement or between the statement of a child and their parent(s) or sibling(s) may often count strongly against them, despite the fact that these discrepancies can be explained by the child's developmental stage, the child's position in the family or traumatic experiences. For this reason, minor asylum seekers should be interviewed by someone with a background in clinical child psychology. (Regular) interviewers and decision makers with the IND and immigration law judges generally have no understanding of psychological explanations for divergent stories or drawings (Van den Berg, Van Os & Den Uyl, 2012).

Recommendations

- Train interviewers, decision makers and immigration law judges in children's rights to asylum (*vluchtgronden*), as well as in how children recount stories, taking into account the traumatic experiences that children may have suffered, the fact that they may be victims of human trafficking, and the effect on the child of being interviewed in an unfamiliar language.
- Ensure that, in every asylum procedure involving children, an individual assessment of the child's best interests is carried out and that this assessment is substantiated. Also ensure detailed, child-specific information regarding countries of origin (in country reports; *ambtsberichten*) which can be used as a basis for individual assessments.

Age assessment

The current method of age assessment for unaccompanied minor asylum seekers in the Netherlands does not satisfy minimum requirements (Kuenen, Roscam-Abbing & Schumacher, 2013).

Unaccompanied minor asylum seekers, arriving in the Netherlands, applying for asylum but unable to submit reliable identification papers, are offered the opportunity to undergo an age assessment in cases of doubt regarding their status as youths. The age assessment is performed by the Netherlands Forensic Institute (NFI) on behalf of the IND. The assessment consists of a radiograph of the hand and wrist, and may be expanded to include a radiograph of the clavicle. The Dutch Association of Age Assessment Researchers (DA-AAR) asserts that these radiographs are not reliable and that the emotional effects of these tests and the weak physical and mental health of these juveniles are insufficiently taken into account. This assertion is in line with the criticism voiced by the Human Rights Commissioner of the Council of Europe regarding Dutch age assessments, in August of 2011 (Hammarberg, 2011a). Other methods exist to (help) determine a person's age, such as multidisciplinary examination. Bone examination alone, at any rate, is not enough to determine a person's actual age and is moreover stressful. The criticisms on these age assessments are grave, and to pilot a multidisciplinary approach to age assessment in consultation with experts.

Recommendation

- Replace the current assessment method of radiological age determination by a more scientifically based method that is less stressful for youths.

Family reunification

The Netherlands' immigration policy is restrictive when it comes to family migration as well. There are strict conditions for the admission of family members, that can only be deviated from in extremely exceptional cases. The best interests of children are of subordinate importance in both family migration policy and individual decisions in family migration cases. In 2013, the percentage of refused requests by children to join a parent in the Netherlands was 37 (*Kamerstukken II 2013/14*, 19 637, nr. 1797). This means that approximately 2,500 children remained separated from their parent(s) against their will.

In February of 2011, the Human Rights Commissioner of the Council of Europe stated that it is becoming increasingly difficult for immigrants to bring over their families. People submitting requests for family reunification must satisfy unreasonable conditions that create insuperable obstacles. The Netherlands were mentioned as an important example of a country where the right to family reunification is not properly safeguarded (Hammarberg, 2011b).

Policy concerning family reunification (*nareisbeleid*)

In the period of 2012 to 2014, a number of steps were taken in policy and legislation regarding the right of family members to join their family in the Netherlands. In consequence, significant improvements have been implemented. For children, the existence of an actual family tie is assumed upon confirmation of a biological family relationship (*Kamerstukken II 2013/14*, 19 637, nr. 1568). There is no possibility for persons over 18 years old to obtain redress in case they submitted a request for family reunification under the old regime.

A further problem is that, if an unaccompanied minor is granted asylum in the Netherlands, he or she is only allowed to invite their parents for family reunification purposes, not their siblings. This forces their parents to make an inhuman choice as to which child or children they wish to live with.

Dutch children with a foreign parent

Another problem with regard to children's rights is the position of Dutch children with a parent taking care of the child, who has no right to a residence permit (Weterings, 2013). According to the Court of Justice of the EU, such parents may, subject to conditions, be granted a dependent right of residence based on the EU citizenship of their child (HvJEU 8 maart 2011, C-34/09, JV 2011/146 m. nt. P. Boeles). However, the Dutch application of this EU right, as well as case law on this subject, is extraordinarily strict in this regard. Only if the other parent is deceased or permanently and untraceably absent, a parent may be granted residence with a Dutch child.

Individual best interests of the child determination

The main point of concern regarding family migration policy is that no individual best interests of the child determination takes place. Applications are denied purely in reference to legal conditions; the specific consequences of a negative decision for the child and how these compare to the interests of the government are not considered at all (Cardol, 2013). This is the largest problem for children in regular immigrant families. Parents are subject to many conditions to which there are no exceptions, even when this strict policy victimises children. For instance, if a parent does not have a (sustainable) minimum income, the child is not allowed to join them in the Netherlands.

Another worrying issue is the fact that the standards described in Article 12 CRC are not upheld when hearing children about their family relationship(s). Not only do these interviews last too long, but too little effort is made to use interviewing methods specifically adapted to children.

Recommendations

- Grant entry to the Netherlands without additional requirements for parents of children possessing Dutch nationality and parents (and siblings) of children who have been granted a permanent residence permit.
- Ensure that hearings with (foster) children during family reunification procedures satisfy the standards of the UN CRC.
- Create exceptions to the requirements set for adults in family migration policy in the best interest of children involved in family reunification.

Reception and accommodation

Children in asylum reception centres

On 1 June 2014, a total of 5,713 children and youths resided in asylum reception centres (Centraal Orgaan opvang Asielzoekers, 2014). The circumstances under which these children grow up do not satisfy the requirements set by the UN CRC (Kloosterboer, 2009). This applies to all aspects of these children's lives: family and upbringing, housing, recreation, play and leisure time, education, health, safety, asylum procedure, finances and participation. The healthcare system is not accessible enough for asylum seekers and is often insufficiently equipped to deal with the specific problems of these children. The problems encountered in various areas are closely related and – all the more so due to their cumulative nature – constitute a serious threat to the development of these children (Kalverboer & Zijlstra, 2008). Furthermore, the manner in which asylum seekers are received is not geared towards such long-term residence and there is no limit to the period of uncertainty and residence in asylum reception centres. The NGO Coalition for Children's Rights is therefore concerned about the fact that there is no independent monitoring of the reception of children and families. Concerns have also been voiced for a long time about the situation of children in families residing in asylum reception centres. It is assumed that the parents take care of their children.

However, these parents often prove to be unable to do so, due to the circumstances and to problems they are experiencing, as a result of traumatic experiences, language issues and cultural shock. The children involved therefore run an increased risk of growing up in a problematic childrearing environment (GGD Nederland, 2013).

Recommendations

- Organise independent monitoring of the situation of children in asylum reception centres and ensure that the manner in which asylum seekers are received is of good quality and in accordance with children's rights.
- Design and furnish reception centres in accordance with the quality requirements that apply for permanent residence.
- Invest in effective agreements and staff training to ensure better recognition of the (mental) health of children residing in asylum reception centres.
- Train staff of asylum reception centres to apply the children's rights view and appoint a mentor or confidant in each asylum reception centre to answer questions and to help children understand what is happening.

Another major concern is the frequent relocations of asylum seeking children. Each subsequent step in the asylum procedure involves a different location. During asylum procedures, a child moves to a new place of residence on average every year. During the first phase, 2 or 3 relocations are standard. These continual relocations are highly damaging to the cognitive, emotional and social development of children (Werkgroep Kind in AZC, 2013).

Recommendation

- Put a stop to the procedure-driven relocations of children during asylum proceedings. Ensure that government services are brought to the child, instead of the other way around.

Reception of unaccompanied minor asylum seekers

The NGO Coalition for Children's Rights is concerned about the reception of unaccompanied minor asylum seekers (*alleenstaande minderjarige vreemdeling*, hereinafter: AMV). These children may be placed in an AMV centre, run by the Central Agency for the Reception of Asylum Seekers (*Centraal Orgaan opvang asielzoekers*, hereinafter: COA). For the European GATE project (Guardians Against Child Trafficking and Exploitation), Defence for Children investigated the risks unaccompanied minor asylum seekers are exposed to in the Netherlands. One major risk for these children are the large-scale reception centres. These centres are not safe, the children are unhappy there, and many children disappear (GATE, 2013). In 2013 alone, 160 unaccompanied minor asylum seekers left the various reception centres, unsupervised (*Kamerstukken II 2012/13*, 27 062, nr. 89).

Unaccompanied minor asylum seekers who are younger than 13 years old are placed with foster families immediately upon arrival in the Netherlands. A child of 13 to 17 years old arriving in the Netherlands unaccompanied by a blood or family-related adult or adults are, in principle, received by COA in a special AMV centre for unaccompanied minor asylum seekers (*POL-amv: Procesopvanglocatie voor alleenstaande minderjarige vreemdelingen*). If the child concerned is vulnerable, they will immediately be placed in guardian families or secure protection centres (a special form of reception for child victims of human trafficking) (Kromhout et al., 2010). These children are then transferred to the most suitable subsequent form of reception, which is often in a substitute family.

Recommendations

- Close the AMV centres. Ensure that unaccompanied minor asylum seekers up to 15 years old are always received in foster families. Receive minors above 15 years old in small-scale living units with intensive guidance.
- Exercise the same care and speed in tracking down a missing unaccompanied minor asylum seeker as in searching for a missing Dutch child.

Sober reception in family reception centres

The NGO Coalition for Children's Rights notes that the minimal reception facilities along with the restriction to move about freely in family reception centres is not in line with the UN CRC. These centres, where parents and their children are sent when they have exhausted all legal means, were opened specifically because the Netherlands is no longer allowed to turn children out into the streets. In these centres, parents have to prepare their departure from the Netherlands. In 2013, 2,050 parents and children resided in such family centres (Ministerie van V&J, 2014). These centres are not prisons, but families are not allowed to move about freely. Parents are obliged to report in every day. The reporting time falls in the middle of the day, meaning that their children can never have a day out. The facilities, accommodations, food and everyday care are sober, although children can go to school. While many families received psychological care and parenting support before the move to a family reception centre, this is now abruptly discontinued (Werkgroep Kind in AZC, 2011).

Recommendation

- Close the special return centres for families with children that have exhausted all legal means; organise support for these families in the regular reception centres they are already residing.

'Rootedness' as grounds for residence

The NGO Coalition for Children's Rights is pleased to see acknowledged that 5 years of uncertainty is more than enough for asylum-seeking children. With this solution, the government respects the UN CRC and other human rights conventions.

In 2006, Defence for Children and the association of children and youths '*Wij blijven!*' began to campaign for a permanent solution for children who have become rooted (*geworteld*) in the Netherlands. The subsequent struggle for the rights of rooted children lasted several years, but came to a successful conclusion on 31 October 2012. The government announced a Children's Amnesty (*Kinderpardon*) for the children of asylum seekers and unaccompanied minors who had spent more than 5 years in the Netherlands prior to reaching the age of 18 years old. Furthermore, a final arrangement was drawn up for children who become rooted in the Netherlands in the future while lacking a residence permit. The Regulation for Children Residing for an Extended Period (*Regeling voor Langdurig verblijvende kinderen*, *Stcrt.* 2013, 2573) took effect on 1 February 2013.

Concerns persist however with regard to children with roots in the Netherlands who do not satisfy the criteria for the Children's Amnesty. Almost a year and a half after the regulation came into effect, an estimated 600 children are for varying reasons left out of the Children's Amnesty, despite the fact that these children do satisfy the main criterion of having resided in the Netherlands for at least 5 years prior to reaching the age of 18 years old (*Kamerstukken II 2012/13*, 19 637, nr. 1597).

Children are denied amnesty if they have spent a period longer than three months outside of the central government's supervision. Being known to local (municipal) government is not considered sufficient by the central government. Children who, upon conclusion of asylum procedures, were actively removed from reception centres and left to their own devices together with their parent(s) therefore do not qualify for a residence permit on the grounds of the Children's Amnesty (*Kamerstukken II 2012/13*, 19 637, nr. 1597).

Children of parents who applied for a permit other than an asylum residence permit also do not qualify for the Children's Amnesty (*Kamerstukken II 2012/13*, 19 637, nr. 1597). The type of procedure that a child has gone through is not relevant for that child's rootedness, however. Children with a regular immigration background equally become rooted in the Netherlands and have an equal right to the Children's Amnesty in order to prevent damage to their development.

Children who have a parent who is suspected to have violated human rights (Article 1F of the Convention on Refugees) are also excluded from the Children's Amnesty. Discrimination of children on the basis of their parent's actions is in breach of Article 2, paragraph 2 CRC.

Recommendations

- Introduce a legal ground for the granting of residence permits to children rooted in the Netherlands, after 5 years' residency in the Netherlands.
- Adapt this term for particularly vulnerable children such as unaccompanied minors and traumatised children.

Access to health care

The right to equal access to healthcare for undocumented children is endangered. Many undocumented children and their parents are unaware that they have a right to medical care, and the same applies for many staff members at care institutions. Undocumented children and/or their parents are still commonly turned away at hospital reception desks because they cannot provide identification (see chapter 3, paragraph 3.2 for a comprehensive discussion).

Access to youth care

In the new Youth Act, effective as per 1 January 2015, undocumented children are statutorily denied access to youth care. This is in breach of Article 2 CRC. In the Implementation Decree Youth Act (*Uitvoeringsbesluit bij de Jeugdwet*), this exclusion is partly nullified, but by including this legal exclusion in a law that is highly important for children and is supposed to protect them, the government is sending out the completely wrong message in respect of undocumented children's right to protection (also see chapter 2, paragraph 2.1).

Recommendation

- Annul the statutory exclusion of undocumented children from the Youth Act.

Abolishment of permit for unaccompanied minor asylum seekers

Unaccompanied juveniles whose request for asylum has been denied can, since 1 June 2013, no longer apply for a residence permit as unaccompanied minors. This means that their presence in the Netherlands is illegal and that they can therefore no longer do anything that requires identity papers (*Kamerstukken II 2011/12, 27 062, nr. 75*). This restricts these youths in their social lives and makes them particularly susceptible to exploitation.

Youths who exhaust all legal means in requesting their asylum, or are not permitted to reside in the Netherlands as they await the processing of their request for asylum, cannot identify themselves in the Netherlands. They can generally not obtain a passport from the authorities of their own country and do not qualify to receive a passport from the Dutch authorities. However, they do run a risk of being apprehended by the police, as a result of the Extended Compulsory Identification Act (*Wet op de uitgebreide identificatieplicht, Stb. 2004, 300*) of 1 January 2005. Many youths who are detained by the police may be taken into custody and fined because of their inability to provide identification. Youths are therefore afraid to go outdoors and retreat from public life.

Recommendations

- Issue unaccompanied minors a temporary residence permit so that, for as long as they are not deported, they can be fully protected.
- Furthermore, the government should issue residence permits to unaccompanied minors who cannot return to their country of origin within 1 year.
- Arrange for a children's judge to review decisions to deport unaccompanied minors and ensure that in that review the best interest of the child is a primary consideration.

Stateless children

It is estimated that, several thousands of children in the Netherlands are actually or legally stateless. The largest group are undocumented Roma children. They often already reside for years illegally in the Netherlands and cannot be deported as no other country recognizes the Roma as their nationals. Invoking conventions to prevent statelessness often fails because not all of these children were born

in the Netherlands and because these children were never officially admitted to the Netherlands. Article 7 CRC obliges the State to help such children obtain a nationality so that they do not remain stateless.

Recommendation

- Grant the Dutch nationality to stateless children who reside in the Netherlands for the long term and who must therefore be considered residents.

Return and deportation

Support for the return of unaccompanied minors

The Netherlands offers unaccompanied minors support when being repatriated. However, that support is generally limited to financial support and administrative assistance in arranging the journey. Youths from Angola or the Democratic Republic of the Congo whose families can not be reached, and who are therefore without accommodation upon arrival, can be housed temporarily in a shelter sponsored by the Dutch government (UNICEF Nederland, 2012). Experience shows that with regard to such orphanages, the IND no longer investigates at the individual level whether return is in the child's best interests. Once an orphanage exists, it is automatically considered suitable and the child in question therefore does not qualify for residence as an unaccompanied minor. Whether the child is eventually reunited with his family and stays there or how the child is doing at all is not monitored. The Dutch government does not consider that part of its responsibility. In April 2010, the Human Rights Commissioner of the Council of Europe expressed concerns over the deportation of vulnerable children into orphanages in their countries of origin (Hammarberg, 2010). In the Netherlands, vulnerable children who temporarily cannot live at home are, by preference, placed with a foster family, as the UN CRC requires. The NGO Coalition for Children's Rights finds it most concerning that different standards are applied for children from abroad and orphanages are considered appropriate in their cases.

The national report 'Closing a Protection Gap' shows that guardians should be given a greater role in the preparations for a safe return. Their views on the best interests of the children under their guardianship should be taken into account more seriously. The return of unaccompanied minor asylum seekers is not organised in compliance with the UN CRC. The Core Standards for Guardians of Separated Children contain clear indicators for guardians in the context of return. The opinions of guardians should be considered much more carefully when deciding whether a child's return is safe and in the child's best interests (Defence for Children International – ECPAT Nederland, 2011).

Better support is also needed for the safe return of unaccompanied minor asylum seekers.

Furthermore, far too little is known about the well-being and safety of returned minors. Monitoring does not take place. Available contacts are not used for, for example, the International Organisation for Migration (IOM) and the Red Cross, or of social media and self-reporting by the children.

Recommendations

- Always consider what is in a child's best interests – an individual assessment of interests must always be performed. In each individual case, it needs to be checked whether accommodation is available for the child in its country of origin, and whether that accommodation truly is adequate in each individual case.
- Allow the guardians of unaccompanied minor asylum seekers a lot more influence in decisions taken about children, with the Core Standards for Guardians of Separated Children as a starting point.
- Monitor and evaluate the return of unaccompanied minor asylum seekers before deciding on an increase in the number of return homes. Allow guardians a stronger voice in repatriation decisions and assign them a greater role in the preparations for a safe return.

5.4 CHILD LABOUR

(Article 32 CRC)

Introduction

In 2010, the Labour Inspectorate (*Arbeidsinspectie*) carried out over 700 inspections in, among others, hotels, restaurants, cafés, supermarkets and the agricultural and horticultural sectors. More than half (60 percent) of all hotel, restaurant and café establishments and 44 percent of retail businesses did not respect regulations regarding working and resting times for children (13-, 14- and 15-year-olds). In the agricultural and horticultural sectors, many children worked, for example, with plants that had been treated with plant protection products less than two weeks before, while in the hotels, restaurants and cafés children performed forbidden work, such as the operation of industrial dishwashers (*Arbeidsinspectie*, 2011).

Given the high number of violations, especially in the hotel, restaurant and café sector, the Inspectorate has tightened its inspections in these areas. In 2012, 194 hotel, restaurant and café establishments were inspected, 44 percent of which were found to violate regulations. Children of 13, 14 and 15 years old were permitted, for instance, to man the cash register independently, work in environments in which alcohol is served, or work in the vicinity of dangerous machines. Many children worked until late. Working after 11 p.m. is a violation that is especially common with 16- and 17-year-olds (*Arbeidsinspectie*, 2011).

Too often and too long hours

Although the Specific Child Labour Regulation (*Nadere Regeling Kinderarbeid*, hereinafter: *NRK, Strct. 2007, 64*) provides that children may not perform paid work before the age of 13 years old, an investigation by research institute IREWOC among 2,514 children revealed that 22 percent of 12-year-olds have jobs (*Strehl et al., 2012*).

The relatively large number of violations of working hours regulations is striking. Children up to 15 years old are not allowed to work more than 12 hours a week, more than 5 days a week and to work on both Saturday and Sunday in the same week. Of the group of working children ages 12 to 15 years old, 8 percent works more than the legal maximum for working hours (12 hours a week).

An additional cause for worry is that 27 percent of children aged between 12 and 15 years old also occasionally work between 7 p.m. (in the evening) and 6 a.m. in the morning, for instance in hotel, restaurant and café establishments, supermarkets and when babysitting. One in 5 children indicates that they sometimes experience physical complaints as a result of their work and one in 4 reports to not always have enough time for homework due to their job.

The 2012 inspections by the Labour Inspectorate revealed many similar violations. Most of these cases led only to a warning, not a fine. Only 16 of the 85 businesses found to have committed a violation in 2012 were given a fine (*Arbeidsinspectie*, 2013).

Recommendation

- Impose fines for violations of child labour regulations.

Providing information

The Labour inspection put much effort into informing employers, parents, schools and minors about child and youth employment in 2011 (*Rijksoverheid*, 2011). Still many violations are taking place.

Repetition of this information is therefore necessary.

Recommendation

- Provide adequate information to young employees about their labour rights.

Abuse in supermarkets

In 2009 the Dutch Trade Union Confederation (the FNV) reported on supermarket abuse (FNV

Bondgenoten, 2009). Youths aged 16 to 19 years old often work in supermarkets, but have few rights and are paid little. Many youths are dismissed after 3 temporary contracts, instead of being offered permanent employment. There is a minimum wage that increases with a youth's age, but this youth minimum wage is very low. Youths earn about a third of a 23-year-old's wages. Another option might be to award wages based on position instead of on age, using the increased youth wage as a basis. Employees with zero hour contracts often lose their salary (e.g. when ill), despite provisions in collective labour agreements and the Flexibility and Security Act (*Flexwet, Stb.* 1998, 300). They often work longer hours that was contractually agreed but are not paid accordingly, have many split shifts (e.g. working from 9 a.m. until noon and then from 5 p.m. until 8 p.m.), and the schedules are often published on short notice. Another worrying signal is the fact that ever since the legal age for tobacco and alcohol was raised to eighteen in 2014, cashiers must deal with angry customers more frequently, according to the trade unions FNV Jong and FNV Bondgenoten. For youth cashiers, this can be very intimidating (FNV Bondgenoten, 2013).

Recommendations

- Improve compliance with the Flexibility and Security Act in order to improve the working conditions of youths working in supermarkets.
- Increase youth minimum wage and/or consider remuneration based on position instead of age, using an increased minimum youth wage as a basis.
- Ensure that tobacco and alcohol products are sold in a separate space staffed exclusively by experienced employees over 18 years old.

Holiday work

It is unclear whether Dutch legislation concerning working hours for holiday work is in accordance with ILO Convention 138. According to the Convention, 13- and 14-year-olds may only perform light work; Dutch legislation, however, provides that these children may work 7 hours a day during the summer holidays, and 35 hours a week (no more than 5 days in a row). The definition of child labour does not distinguish between work performed during holidays and work performed during the school period; what matters is the nature of the work. Many children have various jobs during the summer holidays, meaning that in practice they sometimes work 7 days a week. Because the Labour Inspectorate does not research the total number of hours worked by children who hold several jobs, serious violations occur. Dutch legislation is based on European Directives (Richtlijn 94/33/EC), which state that children are permitted to work 35 to 40 hours a week during holidays.

Recommendation

- Revise the existing regulations regarding working hours during holidays for 13-, 14- and 15-year-olds and ensure that it is in accordance with ILO Convention 138 with regard to the minimum age at which one may be admitted to the labour market.

Relaxation of Specific Child Labour Regulation

The NRK defines among others under which circumstances children in the Netherlands may work. In recent years, this regulation has been relaxed, which encourages the economic exploitation of children up to 15 years old.

For example, the working and rest times for 15-year-olds were broadened, the obligation to conclude a so-called 'conveyor belt agreement' (*lopendebandovereenkomst*: children were only allowed to work at conveyor belts if an agreement had been made to this effect between the employer and the child and his or her parents) was lifted, and the definition of 'light labour' was relaxed for internships.

At the same time, the Labour Inspectorate was subject to serious cutbacks and the yearly inspection for safe holiday work was abolished. Ceasing these inspections will likely encourage violations of the

Working Hours Act (*Arbeidstijdenwet*, Stb. 1995, 598), the Working Conditions Act (*Arbowet*, Stb. 1999, 184) and the NRK and could even lead to more abuse and exploitation during holiday work and children's jobs.

Recommendations

- Resume labour inspections in sectors where many children are employed, to eradicate the economic exploitation of children and reduce violations of the Specific Child Labour Regulation, the Working Hours Act and the Working Conditions Act.
- Revise the relaxation of the Specific Child Labour Regulation.

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Legislation and policy

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- Wet van 14 maart 2013 tot wijziging van diverse wetten in verband met de invoering van de verplichting voor bepaalde instanties waar professionals werken en voor bepaalde zelfstandige professionals om te beschikken over een meldcode voor huiselijk geweld en kindermishandeling en de kennis en het gebruik daarvan te bevorderen, onderscheidenlijk die meldcode te hanteren (verplichte meldcode huiselijk geweld en kindermishandeling), *Stb.* 2013, 142.
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CHAPTER 6. CHILDREN'S RIGHTS AND DEVELOPMENT COOPERATION

(Articles 3, 4, 6, 23 paragraph 4, 24 paragraph 4 and 28 paragraph 3 CRC)

Introduction

In April 2013 the Dutch Government presented its new policy for development cooperation. This policy shows a clear shift in priorities focusing more on the nexus between aid and trade. This is reflected in a new Minister for Foreign Trade and Development Cooperation. In spite of repeated appeals by children's rights organisations prior to and after the latest elections (2012-2013), the Government has deliberately chosen to remove children's rights from its policy priorities list for international cooperation (Ministerie van Buitenlandse Zaken, 2013).

Aid and trade

The new international development policy does not invest in basic education and basic health care, which used to be priorities. The policy agenda now focuses on eradicating extreme poverty in a single generation ('getting to zero'), sustainable, inclusive growth all over the world and success for Dutch companies abroad (Ministerie van Buitenlandse Zaken, 2013). The Dutch Government has indicated that support for international trade and businesses will be subject to abiding by the OECD guidelines for multinational enterprises, the UN Guiding Principles for Business and Human Rights (hereinafter: UNGP) and ILO Core Labour standards.

The National Action Plan for the Implementation of the UNGP (launched December 2013) pays attention to child labour, but makes no explicit reference to children's rights. Neither does it refer to the Children's Rights and Business Principles (hereinafter: CRBP) developed by UNICEF, the UN Global Compact and Save the Children. The CRBP exist of 10 guidelines for companies regarding dealing with children's rights in a responsible manner. The Ministry has been requested by parliament to explore how these principles could be addressed in the execution of the National Action Plan.

Recommendations

- Pay explicit attention to the improvement of children's rights in development cooperation policy, budget and negotiations on programmes for development cooperation and foreign trade, based on the policy priorities. Key considerations and checks should include child participation, child rights impact assessments and child responsive budgeting.
- Give due consideration to children's rights in any cooperation with and regulation for the corporate sector; as a minimum the CRBP should be regarded and used as an important add-on to the UNGP (cf. the UN CRC and the Universal Declaration on Human Rights, hereinafter: UDHR).

Development assistance budget

The shift in policy priorities and focus on trade was accompanied by a severe cut in budget allocation for development cooperation (*Kamerstukken II 2013/14*, 33 750, nr. 1). The Netherlands did not exempt itself from the international trend of declining global ODA (Official Development Assistance). Austerity measures taken in face of the economic crisis, hit development cooperation disproportionately. As a result, in 2013 the Dutch ODA made a historical drop below 0.7 percent of GNP and is expected to be only 0.55 percent of GNP in 2017 (Ministerie van Financiën, 2013). However, ODA remains the largest international resource for the world's 43 poorest countries, with 250 million people living on less than US\$ 1,25 a day, the majority of which have very low government spending per person.

Recommendation

- Alleviate or reverse the austerity measures for ODA, in order for the Netherlands to recommit to the internationally aspired standards.

Education

Within the current policy on development cooperation education is no longer a priority, while education development in the light of the post-2015 development goals is seen as a priority in both developing countries as well as developed countries. Developmental aid to education decreases globally. Since 2010 the Netherlands has seen the second largest drop in its aid to education, after the World Bank (UNESCO, 2014). This is remarkable, since the Netherlands have been one of the most important donors for education in developing countries since 2000. In addition, aid to basic education was cut for countries most in need, many of which are fragile states and countries in conflict, home to half of all children out-of-school.

Recommendation

- Recognize the importance of investing in education for the eradication of extreme poverty, sustainable economic growth and the development of the private sector. Take necessary policy measures, with correspondent budget allocations, that allow education to make that contribution.

Humanitarian aid

The NGO Coalition for Children's Rights is positive about the Dutch government maintaining the budget for humanitarian aid. This is against the global trend that shows a decline in humanitarian aid since 2010 (OCHA, 2014). Especially nowadays with the number and severity of emergency situations increasing, the Dutch Government has made fragile states one of its priorities in the negotiations for the post-2015 development agenda.

The extent of consideration for children's rights within Dutch humanitarian aid is, however, less obvious. One example that illustrates the importance of due consideration to children's rights in humanitarian aid is the role of education in emergency situations. Half of the world's out-of-school children live in conflict-affected countries. Many others live in countries affected by natural disasters. Yet, globally the education sector only received 2 percent of humanitarian aid that was funded by humanitarian appeals in 2013. This is only a tiny share of the requests for humanitarian education funding.

Recommendations

- Ensure that humanitarian aid policy pays due attention to children's rights. Specific financial aid needs to be allocated for children in risk prone and crisis situations, as children are the most vulnerable group.
- Ensure financial support is provided not only for life saving interventions, but also for the fulfilment of the rights to education and protection. Safeguard these rights in both emergency and prevention programmes, designed to avert disasters.

Gender

An area that gained prominence in the government priorities is sexual and reproductive health and rights (SRHR), including HIV and AIDS. The Dutch Government is commended for its dedication to this area of sexual rights, safeguarding its budgetary allocation and its energy for getting these rights on the post-2015 global development agenda. Most of the public and programme attention within this priority area has thus far been focused on the reduction of maternal mortality. In the new agenda child marriages and addressing gender-based violence in conflict areas are priorities. A Gender Taskforce was installed by the Ministry of Foreign Affairs in June 2014. In spite of these efforts, the NGO Coalition for Children's Rights is concerned there is still too little attention for children.

Recommendation

- Encourage the Gender Taskforce to specifically address gender based disparities, in order to achieve important outcomes for children and adolescents (i.e. health care, female genital mutilation, access to secondary education for girls, child marriages and protection from violence).

Social Protection

Eighty percent of the global population lack any form of social protection. The Netherlands have been supporting several social protection programmes in Africa since 2009, with a focus on birth registration and cash transfers. In recent years, social protection has received increasing international attention demonstrated by the inclusion of social protection in the draft post-2015 development goals. By deciding to focus on fragile states and SRHR during the post-2015 process, it seems social protection is no longer a priority for the Dutch government. Instigated by a Parliamentary motion, the government committed to financing a multi-country support programme on social protection in four African States (*Kamerstukken II 2013/14*, 33 750, nr. 17). However, there is still a lack of clear policy guidance on social protection and a structural budget for the most vulnerable groups.

Recommendation

- Invest in social protection with structural budgetary allocations and mainstream social protection within the current policy priorities for foreign trade and development cooperation.

Human rights policy

In addition to the lack of clear and specific priority for children's rights in Dutch foreign trade and development cooperation, policies and budgets, children's rights have not received due attention in the latest human rights policy (*Handelingen II 2013/14*, 32 735, nr. 95). Current human rights policy includes a focus on combating child labour, child marriages and sexual violence, but lacks a comprehensive approach to tackle children's rights violations.

Recommendation

- Ensure that the development cooperation and human rights policies include a comprehensive approach to tackle children's rights violations, with special attention for gender disparities and vulnerable groups such as children with disabilities.

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CHAPTER 7. SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

(Articles 34, 35, 36 and 39 CRC and the UN Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography)

Introduction

The NGO Coalition for Children's Rights is pleased with the measures taken in recent years to protect children against sexual exploitation in particular, but also wishes to point out problem areas and the importance of combating all forms of child trafficking. The creation of overarching measures such as the criminalisation of sale of children and the formulation of an integral action plan to ban all forms of child trafficking are 2 important first steps. Concerns exist however with regard to the combating of child pornography. The Netherlands should take repressive measures against hosts who refuse to remove material of child pornography. Finally, an important issue is the protection of foreign, underage victims of human trafficking; the best interests of the child are not of a primary consideration in the special residence scheme for victims of human trafficking.

Legislation

The Dutch government has taken various legal and other measures over the past few years, in order to protect children more truly against sexual exploitation. In 2010, the Netherlands ratified the Council of Europe Convention on Action against Trafficking in Human Beings (*CETS* No. 197) and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention (*CETS* No. 201)), which make it illegal to access child pornography via the internet. It does not matter anymore whether the files are downloaded or not. Showing sexual acts to minors for sexual purposes, e.g. via webcam, has been criminalised as well.

The exploitation of minors under 18 years old is considered an aggravating circumstance in human trafficking cases with the implementation of the Directive on Preventing and Combating Trafficking in Human Beings and Protecting Victims (Directive 2011/36/EU) in November 2013. Previously, this applied for minors under 16 years old only. Lastly, due to the implementation of the Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography in March 2014 (Directive 2011/93/EU), the abuse of the vulnerable position of a minor and the use of violence have been added as aggravating circumstances to Article 248 of the Dutch Criminal Code. A new criminal offence due to the implementation of the EU Directive is inciting a child into sexually offending another person (Article 248f Dutch Criminal Code).

In the Netherlands, the prohibition of the sale of children has yet to be included in the Criminal Code. Cases of illegal adoption and sale of children have shown that, in practice, the Dutch criminal justice system is not able to act against this, as there is no article in the Criminal Code that specifically addresses it. Existing legislation addressing wrongdoings in adoption procedures does not apply here because these cases did not involve incorrect adoptions.

Recommendation

- Prohibit the sale of children in the Dutch Criminal Code, including the sale of children for adoption purposes, in order to prevent the sale of children by intermediaries or parents themselves.

National Action Plans

Despite previous recommendations of the UN Committee on the Rights of the Child, the Netherlands still do not have a comprehensive National Action Plan for the combating and prevention of all forms of exploitation of minors. Instead of an integral National Action Plan, the Dutch government has further elaborated policy in various action plans, such as in:

- The Nation-Wide Approach to Loverboy problems 2011-2014 Action Plan (*Actieplan Rijksbrede Aanpak Loverboyproblematiek 2011-2014*). This Plan mentions that the Minister wishes to invest in the promotion of expertise in youth care institutions;
- The Approach to Child Abuse 2012-2016 Action Plan 'Children Safe' (*Actieplan Aanpak Kindermishandeling 2012-2016 'Kinderen veilig'*), originating from the Ministry of Health, Welfare and Sports and the Ministry of Security and Justice and a Child Maltreatment and Child Sexual Abuse Taskforce was established. The Action Plan states that in the approach to child maltreatment more attention will be given to sexual abuse and the links with child pornography. It is therefore of importance that these subjects be included in the education of (youth) care professionals;
- The Child Sex Tourism Action Plan (*Plan van Aanpak Kindersekstoerisme*) presented to the House of Representatives by the minister for Security and Justice in October 2013. The Action Plan focuses on the improvement of international cooperation efforts with countries where child sex tourism is common. Secondly, it focuses on structural efforts to improve the frequency and quality of reports on child sex tourism through awareness-raising campaigns.

The elaboration of policy in these separate action plans hinders a comprehensive strategy, since these do not have any attention for foreign child victims of human trafficking and for other forms of child exploitation such as forcing children to beg or perform criminal acts. Moreover, the NGO Coalition for Children's Rights notes that not all activities described in these action plans include concrete objectives, parties responsible for implementation, a timeline with planned evaluation moments and an allocation of budget. This is necessary for the effective performance of the activities described in these action plans. Therefore the Dutch government has significant improvements to make in this area.

Recommendation

- Create a comprehensive National Action Plan for the combating and prevention of all forms of exploitation of minors.

Investigation and prosecution

Investigation and prosecution of child trafficking

The NGO Coalition for Children's Rights expresses its grave concern about the increasing number of registered child victims of exploitation in the Netherlands. In 2013, the Human Trafficking Coordination Centre (*Coördinatiecentrum Mensenhandel*, CoMensha) knew of 260 minors; in 2008, this number was 118 (CoMensha, 2012). Another concern is that not all potential victims known by organisations are registered.

A positive development is that the percentage of convictions for human trafficking was higher in 2012 than in previous years, as evidenced by investigations by the National Rapporteur on Trafficking in Human Beings (*Nationaal Rapporteur Mensenhandel*, hereinafter: National Rapporteur). A tendency towards heavier sentences has also been noted. The average length of custodial sentences was more than 25 months in 2012, compared to over 20 months in 2010. In at least 16 percent of all cases registered with the Public Prosecution Service, at least one victim under 18 years old was involved (Nationaal Rapporteur Mensenhandel, 2012a).

The NGO Coalition for Children's Rights supports the National Rapporteur's recommendation that the investigation of human trafficking requires greater investments in financial investigations and in the combating of organised criminal groups and of legal organisations that, consciously or not, facilitate human trafficking. Despite the fact that the Police, the Royal Netherlands Military Constabulary and the Inspectorate SZW of the Ministry of Social Affairs and Employment are aware of this, it seems to be addressed barely.

Recommendation

- Invest in financial investigation and in the combating of organised criminal groups and of legal organisations that, consciously or not, facilitate human trafficking.

Investigation and prosecution of child pornography

The NGO Coalition for Children's Rights strongly believes there must be sufficient attention for persons who download child pornography, as they sustain the demand for child pornography. Persons downloading child pornography are dealt with through special police action days (*Kamerstukken II 2008/09, 31 700-VI, nr. 114*). The NGO Coalition for Children's Rights concludes that the focus of child pornography investigations is on the producers, abusers and on locating victims. Police figures show that the Public Prosecution Service registers an increase in cases involving the distribution and production of child pornography (Nationaal Rapporteur Mensenhandel, 2013). To prevent the further distribution of child pornography, the NGO Coalition for Children's Rights finds it very important that illegal materials are immediately removed from the internet when reported. The Netherlands is one of the top-3 countries in the world in hosting child pornography. The number of reports relating to child pornography hosted on Dutch servers has increased considerably over recent years – from 1,260 in 2010 to 10,587 in 2013 (Meldpunt Kinderporno op Internet, 2013). Most Dutch internet service providers immediately remove reported material through the Notice-and-Take-Down procedure, but some take no action at all. The NGO Coalition for Children's Rights urges the government to take a repressive approach towards internet service providers who do not adhere to the Notice-and-Take-Down procedure. Disputes regarding criminal liability should be solved swiftly and legal repercussions should follow if requests for removal are ignored.

Recommendation

- Adopt a repressive approach towards internet providers that do not adhere to the Notice-and-Take-Down procedure to remove child pornography from the internet as rapidly as possible.

Child pornography involving minors between 14 and 18 years of age

The NGO Coalition for Children's Rights is concerned that within the investigation of child pornography, the investigation of pornography involving adolescents (minors between 14 and 17 years old, who are 'physically mature' and could pass for adults) is not a priority. The production and distribution of this type of child pornography can also be prosecuted under the human trafficking article (Article 273f of the Criminal Code). The NGO Coalition for Children's Rights calls on the Dutch government to invest in the investigation and prosecution of child pornography cases in which 14 to 17-year-olds have been abused.

The government has not implemented the 2008 recommendation from the NGO Coalition for Children's Rights to reverse the burden of proof so that producers, owners and distributors of pornographic materials are required to prove that the persons in the images are at least 18 years old. The House of Representatives adopted a motion to reverse the burden of proof, but the motion was not executed by the Minister of Security and Justice because of doubts about the practicality (*Kamerstukken II 2008/09, 31 700-VI, nr. 130*). The NGO Coalition for Children's Rights advises once more to oblige producers, owners and distributors to prove that they do not engage in child pornography.

Recommendation

- Invest in the investigation and prosecution of child pornography cases in which 14 to 17-year-olds have been abused and reverse the burden of proof so that producers, owners and distributors of pornography must prove that the persons in the images are at least 18 years old.

Investigation and prosecution of child sex tourism

The NGO Coalition for Children's Rights is positive about developments in the investigation and prosecution of child sex tourism. Since October 2012, child sex tourism was officially added to the title and tasks of police teams, and a criminal profile was created by the police. The Police's National Programme for the Combating of Child Pornography and Child Sex Tourism (*Nationaal Verbeterprogramma Aanpak Kinderporno en Kindersekstoerisme*) is aimed at combating child sex tourism more truly (Ministerie van V&J, 2013).

Dutch embassies and liaison officers play an important role in bilateral collaboration and fulfil an essential role in destination countries. The Child Sex Tourism Action Plan (*Plan van Aanpak Kindersekstoerisme*) shows that flexibly employable liaison officers (*Flexibel Inzetbare Liaison Officers*, hereinafter: FILO) will be employed in Asia and South America. These FILOs however, are employed for very limited periods, responsible for a large area and have to cope with a range of legal, cultural and social obstacles. The Minister is to produce a plan for the liaison officers and possibly for the FILOs towards the end of 2014. The NGO Coalition for Children's Rights requests the Dutch government to grant a prominent role to the issue of combating child sex tourism when considering locations and should install permanent liaison officers (Ministerie van V&J, 2013).

Recommendation

- Install permanent liaison officers in countries that are known as destination countries where Dutch citizens sexually abuse children.

International Cooperation

International cooperation to combat child trafficking

The NGO Coalition for Children's Rights feels that an effort should be made towards structural collaboration between administrative authorities, police authorities and judicial authorities in countries of origin for child trafficking outside of Europe. Since 2011, Guinea and Sierra Leone have been the main countries of origin for victims of human trafficking (Nationaal Rapporteur Mensenhandel, 2014). The Netherlands should therefore invest in bilateral collaboration with these countries as well.

Important steps have been taken by the Netherlands to improve cooperation between EU member states by ratifying the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse in March 2010 (*Trb.* 2010, 156) and the coming into force of the EU Directive on Trafficking in Human Beings in April 2011 (*Pbeu* 2011, L 101/1). In the 9th Report on Human Trafficking of 2013, the National Rapporteur concludes that the Netherlands has made considerable efforts in bilateral criminal law enforcement cooperation.

Recommendation

- Create structural cooperation with countries of origin for child trafficking both in and outside of Europe.

International cooperation to combat child pornography

Mutual legal assistance and information exchange requests concerning child pornography between EU member states primarily occur via Europol. In February 2013 the Netherlands, Denmark, Belgium, and Slovenia started a judicial, organisational and digital inventory to achieve information exchange between national child pornography databases and Europol's European Information Service Database. The Netherlands also uses of Interpol's International Child Sexual Exploitation Image Database, which contains classified images.

As the Netherlands is the number one country in Europe in terms of internet hosting, it must make extra efforts to counter the distribution of illegal materials (*Meldpunt Kinderporno op Internet*, 2014). The NGO Coalition on Children's Rights agrees with Dutch hotline for combating Child

Pornography on the Internet (*Meldpunt kinderporno op internet*). Motivation on the part of the agencies and organisations involved is certainly not lacking; however, the effectiveness of international cooperation and police effort could be improved. Investing in greater police capacity and better technological resources is desirable.

Recommendation

- Invest in increasing police efforts and technological resources to counter child abuse images on the internet.

International cooperation to combat child sex tourism

When a perpetrator is abroad, the Dutch government has limited options. Mutual legal assistance treaties assistance in criminal matters may facilitate the process of collecting evidence and exchanging information, reducing the chance that child sex tourists go unpunished. The Netherlands has such mutual legal assistance treaties with only a quarter of the 69 known destination countries. The Dutch government should therefore continue to invest in this and increase this number. A pilot was started in 2014 to map the problems and the needs for law enforcement cooperation with Thailand and the Philippines, which explicitly included child sex tourism. These experiences may serve as an example for the exploration of law enforcement cooperation with the most common child sex tourism destination countries in combating child sex tourism (Nationaal Rapporteur Mensenhandel, 2013b).

Recommendation

- Strengthen law enforcement cooperation in the combating of child sex tourism with the most common child sex tourism destination countries by signing mutual legal assistance treaties.

The Ministry of Foreign Affairs finances NGO projects in destination countries. NGO projects are aimed at increasing awareness of child sex tourism, training professionals, supporting victims and law enforcement authorities and improving cooperation with the tourism sector in destination countries. These projects primarily exist in Asia, Africa and South America. The goal should be to invest structurally.

Recommendation

- Invest structurally in increasing awareness of child sex tourism, training professionals, supporting victims and law enforcement authorities and in improving cooperation with the tourism sector in destination countries.

Expertise of professionals

Expertise on exploitation

In the training provided to law enforcement professionals, not always specific attention is paid to dealing with victims in a child-friendly manner, the standard procedures to be followed and the duties and powers of cooperation partners. There is also a lack of training among professionals that are in direct contact with child victims of exploitation or minors who are at a high risk of exploitation. These professionals are therefore not capable enough to identify child exploitation. Unsurprisingly, identification of child victims of labour exploitation, forced begging and criminal exploitation takes place at a very low rate (Nationaal Rapporteur Mensenhandel, 2014). Furthermore, it is important that training is repeated, are offered to new employees as well and that these training courses partially take place together with other cooperation partners. The Nation-Wide Approach to Loverboy problems 2011-2014 Action Plan (*Actieplan Rijksbrede Aanpak Loverboyproblematiek 2011-2014*) mentions that the government wishes to invest in the development and promotion of expertise in youth care institutions in the 2011-2014 period (Ministerie van V&J, 2011). It is important

that this development and promotion of expertise targets all victims of human trafficking, not just the victims of *loverboy* practices (a loverboy being a boyfriend commercially and sexually exploiting his girlfriend). Care professionals should be extra alert as to whether child pornography has been produced as well. Learning to recognise signs of child pornography should become structural part of the training of youth care professionals.

Recommendation

- Ensure that all staff at agencies that are in direct contact with child victims of exploitation or children and youths who are at a high risk of becoming victims of exploitation are trained to recognise signals and know how to deal with child victims, the procedure to be followed, and the duties and competences of their partners.

Expertise on child sex tourism

In the past years, the Public Prosecution Service and the Police, together with various stakeholders and through the National Improvement Programme Approach to Child Pornography and Child Sex Tourism (*Nationaal Verbeterprogramma Aanpak Kinderporno en Kindersekstoerisme*), have invested in increasing expertise on child sex tourism. Nevertheless, little is known about the scale on which child sex tourism takes place. The Child Sex Tourism Action Plan (*Plan van Aanpak Kindersekstoerisme*) indicates that the Ministry of Foreign Affairs provides monthly overviews to the Dutch Police of the number of Dutch citizens suspected or convicted abroad of sexual abuse of children as of January 2014. Although the announced cooperation is a step forward, both authorities could use each other's networks and knowledge abroad more often.

A working group for child sex tourism was set up in 2013 under the leadership of the Public Prosecution Service. This working group includes the Police, the Royal Dutch Military Constabulary and the NGOs ECPAT, Plan Nederland and Terre des Hommes. The goal is to improve cooperation and optimally use each other's expertise and networks in tracking down Dutch child sex tourists. This working group is a good initiative that should be embedded structurally in the combating of child sex tourism.

Recommendation

- Create structural cooperation between the various stakeholders in the combat against child sex tourism, assigning a central position to the improvement and exchange of expertise.

Prevention

Prevention aimed at children and youth

The NGO Coalition for Children's Rights is pleased to see that information and education regarding *loverboys* is being organised at a national level, instead of leaving it up to the municipality to determine whether and how youths are educated in this matter. It is important that this issue is embedded in the mandatory information and education regarding sexual development and diversity in primary and secondary schools. Attention should also be paid to the prevention of both victims and perpetrators. The NGO Coalition for Children's Rights welcomes the proposal to measure the effectiveness of prevention activities. Little is known about the actual effects of prevention programmes; they are not evidence-based.

Recommendation

- Invest in education and information and media campaigns about all forms of exploitation, aimed at youth, parents and professionals, in order to prevent victimisation and to prevent from offending.

Prevention aimed at perpetrators

Recently, it has become possible to apply for a Declaration of Good Conduct (*Verklaring Omtrent het Gedrag*, hereinafter: VOG) when persons wish to work with children abroad. However, VOGs are rarely denied. In 2013, 740,000 requests were made, and less than 0.5 percent of these were denied. In the volunteer sector, this translated into 43 denials in 2013 (*Kamerstukken II 2013/14, 33 750-VI, nr. 124*). Considering the tens of thousands of VOG applications by volunteers, this is a very low percentage. However, there is no budget available for *Justis* (the agency that carries out VOG screenings) to tailor its procedure further. The NGO Coalition for Children's Rights believes that screening people who wish to work with children is an important measure in the prevention of child sexual abuse and exploitation. Investments must therefore be made to improve its effectiveness.

Recommendation

- Ensure that the screenings performed by *Justis* for VOG applications are tailored further.

Registration

A major problem consists in the absence of consistent and uniform registration at local, regional and national levels. As a result, exact figures about the number of child victims of exploitation are not available. The Human Trafficking Coordination Centre (hereinafter: CoMensha) registers victims of human trafficking. The National Police and the Royal Netherlands Military Constabulary are obliged to report victims to CoMensha (Aliens Act Implementation Guidelines, *Vreemdelingen-circulaire B8/3*), however this obligation does not apply to other (government) agencies. Following a recommendation by the National Rapporteur, Nidos Foundation (the guardianship agency for unaccompanied minor asylum seekers) started reporting victims to CoMensha from 2013 on. Other agencies, such as youth care providers, however, still do not report child victims of trafficking (Nationaal Rapporteur Mensenhandel, 2014). A study revealed that the registration of *loverboy* problems by the Council for Child Protection (*Raad voor de Kinderbescherming*) requires just a relatively minor adjustment to their IT system. This makes it possible to keep better track of whether victims of *loverboys* are put under a supervision order or are placed in a closed youth care institution (Van Deth et al., 2013). It is unclear why this was not followed up. The study results also show that youth care professionals do not probe further to determine when the victim's prostitution started, while this is important information to register. The NGO Coalition for Children's Rights therefore requests the Dutch government to expand the obligation to report victims to also include other organisations that encounter potential child victims of human trafficking.

Recommendation

- Ensure that the obligation to report child trafficking is expanded to other organisations that encounter potential child victims of human trafficking.

Shelter and care

There is insufficient specialised care for girls, and specialised shelter for underage boys who are victims of sexual exploitation is entirely non-existent (Nationaal Rapporteur Mensenhandel, 2014). According to the National Rapporteur, providing adequate care and shelter for underage victims of sexual exploitation remains a point of concern. The Rapporteur identifies the need to develop an overall vision with regard to the care provided to child victims of exploitation. Another concern is that the special care provided to foreign child victims of human trafficking does not continue after a victim has turned 18 years old, while Dutch victims of exploitation may receive care until the age of 23 years old.

Furthermore, little expertise exists on how to deal with the results of the public and permanent

nature of child abuse images on the internet. A study is conducted into the effects of sexual abuse on both children and their parents, with financial support from the Ministry of Security and Justice and the Ministry for Health, Welfare and Sport. It would be desirable for this study to pay attention to the effects of child pornography as well.

Recommendations

- Guarantee sufficient specialised care and support for child victims of sexual exploitation and human trafficking.
- Ensure that the special care provided to foreign child victims of human trafficking starts immediately and if necessary can continue after the victim has turned 18 years old, just as this applies for Dutch victims up to 23 years old.
- Develop expertise on how to deal with the consequences of the public and permanent child abuse images on the internet.

Protected shelter (potential) victims human trafficking

A special form of youth shelter is the protected shelter. Here, vulnerable minors who are victims or are likely to become victims of human trafficking are taken care of in an extremely protected environment. According to the conclusions of a research done by the Research and Documentation Centre of the Ministry of Security and Justice (*Wetenschappelijk Onderzoek- en Documentatiecentrum*, WODC), the placement and residence in such a protected shelter has to be qualified as a deprivation of liberty, for which no legal basis can be found in Dutch law and regulations (Kromhout et al., 2010). The government however characterizes protected shelter as a necessary restraint. This deprivation of liberty is not conform Article 37 CRC and the Dutch Constitution. There is a lack of judicial review as well and there is no provision of legal aid to minors facing placement in the protected shelter. According to the GRETA report the policy nowadays is more flexible and the placement therefore no longer constitutes a deprivation of liberty (GRETA, 2014). The NGO Coalition for Children's Rights however has its doubts whether this is truly the case and calls for another, external examination.

Recommendations

- Organise a form of protected shelter without the application of measures concerning deprivation of liberty and have this examined externally. When the government chooses to continue the protected shelter in its current form, provide the following: a legal basis for placement in a protected shelter subjected to judicial review, advice by for example the Council for Child Protection and free legal aid for minors.
- Ensure more intensive support in the transition to a less protected shelter, to prevent disappearance.

Legal position of foreign child victims of trafficking

The NGO Coalition for Children's Rights agrees with the conclusion of the 2013 report *Kinderhandel in Nederland* ('Child Trafficking in the Netherlands') that policy in the Netherlands is primarily focused on the investigation and prosecution of perpetrators and that there is insufficient attention for the protection of underage victims (Kaandorp & Blaak, 2013). The problem is that the special residence scheme for victims of human trafficking, laid down in Chapter B8/3 of the Aliens Act Implementation Guidelines (*Vreemdelingencirculaire*), is not designed for minors. For instance, the procedure is only available for victims who cooperate in the criminal proceedings against the traffickers. For children, this poses a very high threshold. Residence rights are also dependent on the duration of the criminal investigations, making the best interests of the child in terms of recovery and reintegration subordinate to the interests of tracking down the trafficker. The report of the Group of Experts on Action against Trafficking in Human Beings (GRETA) also urges the Dutch state to adopt a proactive stance and to make the support and protection of victims the core of the effort to

identify underage victims of human trafficking. GRETA also requests more cooperation with NGOs and the involvement of experts working with children in identifying child victims (GRETA, 2014). A separate residency scheme should be introduced for foreign child victims of human trafficking, regardless of whether their case is reported to the police or not. This change only requires a minimal policy amendment.

The already existing special scheme should be made applicable to minors in all cases. Under this scheme, victims who cannot cooperate in criminal proceedings due to grave threats and/or medical or mental limitations can nevertheless receive a temporary residency permit. Furthermore, victims should gain clarity as to what their future holds within a reasonable term, independent of the criminal proceedings (UNICEF Nederland & Defence for Children - ECPAT, 2013).

Recommendation

- Improve the legal position of foreign child victims by declaring the already existing special scheme, under which victims who cannot cooperate in criminal proceedings due to grave threats and/or medical or mental limitations can nevertheless receive a temporary residency permit, applicable to minors in all cases.

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CHAPTER 8. CHILDREN IN ARMED CONFLICT

(Article 38 CRC and the Optional Protocol to the UN Convention on the Rights of the Child on the involvement of children in Armed Conflict)

8.1 GENERAL PRINCIPLES

Introduction

The Optional Protocol to the UN CRC on the involvement of children in Armed Conflict (hereinafter: Optional Protocol or OPAC, UN Doc A/Res/54/263), entered into force for the entire Kingdom of the Netherlands on October 24, 2009 (Trb. 2009, 192), 9 years after it was drafted. On the occasion of the ratification of the Optional Protocol and in accordance with Article 3, paragraph 2 OPAC, the Dutch government declared that the age of 18 years old remained the minimum age for voluntary recruitment of soldiers and officers for the Dutch army. However, youths that have reached the age of 17 years old may be recruited, on a voluntary basis, as a military trainee (*aspirant militair*, hereinafter: aspiring military officer). The number of minors recruited as aspiring military officer by the military has lessened in recent years. In 2009, 899 boys and girls under 18 years old were recruited, whereas in 2010 that number decreased to 513. By 2011 this number even dropped to 138 (Appendix to *Kamerstukken II 2011/12*, 26 150, nr. 110).

Overview of the situation of children and the Dutch armed forces

In May 1997, the government decided to suspend the duty to report for military service by introducing voluntary serving personnel. This suspension means that male citizens between 17 and 45 years old do not have to perform military service as long as the security situation does not require that. From that moment on, the Dutch army consisted entirely of professional soldiers. When male citizens turn 17 years old, however, they still receive a letter, stating that they are registered but not obliged to fulfill the military service. The Framework Act Military Service Conscription (*Kaderwet dienstplicht*, Stb. 1997, 139) allows the possibility to reintroduce the duty to report for military service in times of war or other emergencies and possible compulsory recruitment of all conscripts. The Ministry of Defence currently employs more than 60,000 people, including nearly 18,000 civilians and over 43,000 military personnel (Ministerie van Defensie, 2013). Since 1990, the Dutch armed forces have been active in several wars, for example the war in Bosnia and Kosovo, and armed forces have ruled a province in Iraq. The Netherlands are currently a part of missions in Mali, Afghanistan, Somalia, Turkey, South Sudan and some smaller missions in Eastern Europe, Africa and the Middle East.

Monitoring

Despite the fact that the Dutch government has ratified the Optional Protocol, there is no mechanism or working group within the government that is specifically responsible for coordinating and monitoring the implementation of the Optional Protocol. To make sure that children do not get involved in armed conflicts in the Netherlands or abroad, it is very important that such a monitoring mechanism or working group is established.

Recommendation

- Establish a working group or develop a mechanism specifically responsible for the coordination and implementation of the Optional Protocol.

8.2 PREVENTION

Recruitment of children

Aspiring military officers

The Military Personnel Act from 1931 (*Militaire Ambtenarenwet*, revised in 2009, *Stb.* 2009, 197) declares in Article 1a that a person can only serve in the military if he or she is older than 18 years old. There is an exception to this rule: youths who are 17 years old can become an aspiring military officer. This is a so called probation period after which they can apply for a job at the army. The NGO Coalition for Children's Rights believes that the current practice of recruiting 17-years-olds as aspiring military officers is a violation of the Optional Protocol and should therefore end immediately.

Article 1a of the Military Personnel Act contains 2 requirements that need to be met in order to assure that the recruitment of persons under 18 years old is entirely voluntary:

- The legal representatives of a person younger than 18 years old, have to sign a statement saying they have no objection to the recruitment as aspiring military officer; and
- Aspiring military officers may not directly be a part of hostilities. It is not clear whether participating in crisis management- and peacekeeping operations is therefore impossible.

Despite these 2 conditions, it remains unclear whether aspiring military officers have to perform tasks where they have to protect military personnel or bases. This can be qualified as a direct involvement in armed conflicts.

Recommendations

- Prohibit the current practice of recruiting 17-years-olds as aspiring military officers.
- Provide clarity as to whether or not trainees are involved in protecting bases, personnel and/or materials, because, according to the Optional Protocol, minor aspiring military officers are not allowed to do so.

Military educational programmes

In the Netherlands, there is a variety of schools that provide a military training programme, like the educational programme Safety & Craftmanship (*Veiligheid & Vakmanschap* at the Regional Educational Centres, hereinafter: ROC's). Youths at the age of 15 or 16 years old who have just finished secondary vocational school, can apply for this programme, which prepares them for a job at the army or security services. The NGO Coalition for Children's Rights is concerned about the cooperation between the Ministry of Defense and the ROC's. This cooperation can speed up the process of training a recruit.

Youths should not be exposed to virtual or realistic, strategic and tactical military operations, regardless of whether this group is connected with the Dutch armed forces or not. In addition, the recruitment of youths under 18 years old is a bad signal to other countries, especially to countries involved in armed conflicts. This undermines the position of the Netherlands as a role model and home of the International Criminal Court, for example in the trial of former Congolese rebel leader, Thomas Lubanga Dyilo, for recruiting child soldiers.

Recommendation

- Raise the minimum age for voluntary military recruitment to 18 years.

Firearm and military clothing

Part of the military training of aspiring military officers is to practice using firearm. Even ammunition is used, as part of the module 'shooting'. In comparison, at the police, the use of firearm by 17-year-olds is not allowed; 17-year-olds may only wear handcuffs, a short baton and pepper spray and can only follow a pre-training programme. The actual training to become a police officer is only

open for people 18 years and older and firearm can only be obtained after attending classes and passing an exam. The NGO Coalition for Children's Rights believes the example of the police should be followed to ensure that 17-year-old aspiring military officers in the army do not come into contact with firearm.

In the Hague Peace Conference of 1907 and the Geneva Conventions on humanitarian law, a person who belongs to the armed forces and is in uniform, is seen as a legitimate target in war and/or armed conflict if he or she is 15 years or older. That puts aspiring military officers at great risk.

Recommendation

- Ensure that 17 year old aspiring military officers are not trained in the use of firearm and do not wear uniforms or military clothing that could put them at risk according to international humanitarian law.

Training and awareness of the UN CRC and OPAC

In the Netherlands, the awareness of the Optional Protocol is mostly confined to specialists and NGO's active in the field of children's rights. This is part of the wider problem that the UN CRC is not well known among policy makers, the general public and children. To improve protection of children who are involved or at risk of becoming involved in armed conflicts, it is important that the provisions of the UN CRC, the Lucens Guidelines, and the Optional Protocol are included in military training programs. Besides, a wider public should also be made aware of the provisions of the UN CRC. This must be done in a comprehensive manner and in child-friendly language.

Recommendation

- Include lessons on the UN CRC and its Optional Protocols in military training programs.

Recruitment by armed groups

It is not clear whether the Dutch government has figures that clarify whether Dutch children are recruited by armed groups to participate in conflicts in other countries or in preparation for a future armed conflict. There are however more and more signals that minors are being recruited for armed conflicts or terrorist activities in Syria (Algemene Inlichtingen en Veiligheidsdienst, 2013; *Aanhangsel van Handelingen II* 2013/14, nr. 1443).

Recommendation

- Monitor the possible recruitment of Dutch minors by foreign armed groups.

8.3 PROTECTION, DEMOBILIZATION AND REINTEGRATION

Rights of children in captivity

There is no general policy in case the Dutch army, during an operation abroad, captures minors. According to the Ministry of Defense, specific instructions on the treatment of prisoners is made for each operation. Within these instructions, there are specific provisions for children. The main policy, according to the Ministry of Defense, is that minors in principle are detained separately from adults, but they will not be separated from their family. The treatment of minors in detention takes place with extra care and supervision, according to the Ministry. The attending physician examines at the spot whether the captured person is a minor so that the special provisions for minors apply. The NGO Coalition for Children's Rights calls for the development of general policy that applies to every Dutch army operation abroad. This general policy should at least consider the following matters of concern:

- the reason for captivity;
- whether these children are treated in accordance with the UN CRC;

- whether they are accused of involvement in armed groups;
- legal fees and how to define them;
- whether children may be tried in military courts or by special anti-terror laws.

Additional instructions can be added per operation in order to make it more specific.

Recommendations

- Develop general policy regarding minors that are captured by the Dutch army during a military operation abroad.
- Provide training to military officers on the rights of the child, the rights of child soldiers and the rights of children in captivity.

Refugee children from conflict areas

Identifying victims of armed conflicts among unaccompanied minors or children seeking asylum in the Netherlands with their parents or family members, remains difficult. There is no such thing as a general identification mechanism. Each case has to be assessed individually. Most children prefer not to talk about their past, especially if they committed crimes themselves during armed conflicts. Identifying the problems of these vulnerable children (such as former child soldiers) can therefore prove to be difficult. Because of this, child victims of war do not receive enough or any attention from protection services. Furthermore these children and youths do not receive the specialised care they need and deserve.

The number of unaccompanied minors who have fled to the Netherlands, has decreased in the past few years according to statistics of the Dutch Council for Refugees (VluchtelingenWerk, 2013), from 6,705 in 2000 to 484 in 2011. The majority of the unaccompanied minors that fled to the Netherlands come from countries such as Somalia, Afghanistan, Iraq, White Russia, Sierra Leone and Guinea. In a number of these countries, child soldiers are recruited under pressure for involvement in armed conflicts (VluchtelingenWerk Nederland, 2013).

Children and youths from countries with armed conflicts have the right to receive care to help them cope with the psychological and social consequences of the life-threatening and often traumatic experiences they have suffered. Supporting children and youth on how to cope with the negative experiences and the psychosocial consequences requires expertise and long-term care. Although there is some form of mental health care available for asylum seekers and refugees, the regular mental health care system has little to no knowledge about dealing with the specific psychological problems of children and youths who are victims of armed conflicts.

Recommendations

- Ensure that there is a systematic approach to identify (the problems of) vulnerable groups of children and youths (including child soldiers) from areas with armed conflicts.
- Strengthen the specialised care for children and youths from areas with ongoing armed conflicts, meant to assist them in recovering from their psychological and social problems and their reintegration in society.

Weapons export and cluster munitions

The possibility exists that armed groups, in armed conflicts where most likely children and youths are recruited under pressure or used in hostilities, use weapons that somehow came from the Netherlands. Through allied countries, (parts of) weapons can fall in the hands of countries that are on the Netherlands' black list. The policy regarding export of guns and light weapons and parts of weapons has to be reconciled with that of development cooperation, which currently is not the case. With the adjustment of the policy regarding the export of weapons according to the policy on development cooperation, standards from the Convention on Cluster Munitions (*Trb.* 2009, 45) must be taken into account.

Recommendations

- Aim for the elimination of the import and export of guns, light weapons and parts of weapons to countries where most likely children and youths are recruited under pressure or used in hostilities.
- Make sure there is no undermining of the standards set by the Convention on Cluster Munitions.

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COMPLIANCE WITH THE 2009 RECOMMEN- DATIONS

COMPLIANCE WITH THE 2009 RECOMMENDATIONS OF THE UN COMMITTEE ON THE RIGHTS OF THE CHILD

In the Concluding Observations on the 30th of January 2009, the UN Committee on the Rights of the Child adopted 86 recommendations for the Kingdom of the Netherlands. The recommendations are listed by topic in the table below. The right column indicates to which extent, according to the NGO Coalition for Children's Rights, the recommendation is followed up on. The follow up can be either good (action and visible results), moderate (some action, but insufficient results) or bad (no action).

RECOMMENDATIONS UN COMMITTEE ON THE RIGHTS OF THE CHILD 2009 TOPIC "GENERAL MEASURES OF IMPLEMENTATION"

Ad. 9.

The Committee urges the State party to take all necessary measures to address those recommendations from the concluding observations of the State party's second periodic report and the initial report of the Netherlands Antilles that have not yet been implemented or sufficiently implemented. In this context, the Committee draws the attention of the State party to General Comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child (CRC/GC/2003/5).

Moderate

Ad. 11.

The Committee, in line with its previous recommendations (CRC/C/15/Add.227, paragraph 10) and in light of the Vienna Declaration and Programme of Action, recommends that the State party take all necessary measures to withdraw its reservations to articles 26, 37 and 40 of the Convention.

Bad

Ad. 13.

The Committee recommends that the State party continue to take measures to bring its legislation in line with the Convention.

Moderate

Ad. 15.

The Committee encourages the State party to adopt comprehensive plans of action for the implementation of the Convention in all parts of the State party, based on a vision of children's rights and empowerment and taking into account the outcome document of the 2002 Special Session of the General Assembly of the United Nations "A World Fit for Children" and its Mid-Term Review in 2007. The Committee recommends that the State party ensure adequate budget allocations and follow-up and evaluation mechanisms for the full implementation of the plans of action to regularly assess progress achieved and identify possible deficiencies.

Moderate

Ad. 17.

The Committee recommends the swift passage of the Children's Ombudsman legislation in the Netherlands and the creation of a Human Rights Institution or a Children's Ombudsman in the Netherlands Antilles and in Aruba. The Committee further recommends that these offices be accessible to children and their representatives at the national and local levels and that they conform to the Paris Principles and take into account General Comment No. 2 (2002) on the role of independent human rights institutions (CRC/GC/2002/2). Furthermore, the Committee recommends that in addition to investigating complaints, the Children's Ombudsman or Human Rights Institution have the responsibility to monitor the implementation of and promote the Convention.

Good

Ad. 19.

The Committee recommends that the State party, in accordance with article 4 of the Convention, allocate the maximum extent of available resources for the implementation of children's rights, with a special focus on eradicating poverty and that it reduce inequalities across all jurisdictions. In this endeavour, the State party should take into account the Committee's recommendations issued after the day of general discussion of 21 September 2007 devoted to "Resources for the rights of the child - responsibility of States".

Bad

Ad. 21.

The Committee recommends the establishment of a nationwide system to collect and analyse data on all areas covered by the Convention as a basis for assessing progress achieved in the realization of children's rights and to help design policies to implement the Convention.

Moderate

Ad. 23.

In line with its previous recommendations, the Committee recommends that the State party continue and further strengthen its efforts to ensure that all of the provisions of the Convention are widely known and understood by adults and children alike. In this regard, the Committee encourages the State party to undertake a systematic education and training programme on the principles and provisions of the Convention for children, parents and all professional groups working for and with children, including judges, lawyers, law enforcement officials, teachers, health-care personnel, social workers and media personnel.

Moderate

Ad. 25.

The Committee recommends that the State party encourage the active and systematic involvement of civil society, including NGOs and associations of children in the promotion and implementation of children's rights, including, inter alia, their participation in the planning stage of policies and cooperation projects, as well as in the follow-up to the concluding observations of the Committee and the preparation of the next periodic report. The State party is encouraged to support civil society at the local levels while respecting its independence.

Moderate

Ad. 82.

The Committee recommends that the State party ratify the core United Nations human rights treaties and their Protocols to which it is not yet a party, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, International Convention on the Protection of All Persons from Enforced Disappearance, Convention on the Rights of Persons with Disabilities and its Optional Protocol, Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment, and Optional Protocol to the Covenant on Economic, Social and Cultural Rights.

Moderate

RECOMMENDATIONS UN COMMITTEE ON THE RIGHTS OF THE CHILD 2009

TOPIC “GENERAL PRINCIPLES”

Ad. 27.

The Committee urges the State party to ensure full protection against discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status in all parts of the Kingdom. The Committee also urges the State party to strengthen its awareness-raising and other preventive activities against discrimination and, if necessary, to take affirmative actions for the benefit of certain vulnerable groups of children, asylum-seeking and refugee children and children belonging to minority groups. The Committee further urges the State party to take all necessary measures to ensure that cases of discrimination against children in all sectors of society are addressed effectively.

Bad

Ad. 29.

The Committee recommends that the State party take all appropriate measures to ensure that the principle of the best interests of the child, in accordance with article 3 of the Convention, is adequately integrated in all legal provisions and applied in judicial and administrative decisions and in projects, programmes and services which have an impact on children.

Bad

Ad. 31.

In line with its previous recommendations, the Committee urges the State party to study the problem of the application of criminal law on the termination of life of neonatal children. The Committee recommends, in particular, that the State party:

- a. frequently evaluate, and if necessary revise, the regulations and procedures in the Netherlands with respect to the termination of life on request in order to ensure that children, including newborn infants with severe abnormalities, enjoy special protection, and that the regulations and procedures are in conformity with article 6 of the Convention;
- b. take all necessary measures to strengthen control of the practice of euthanasia and prevent non-reporting, and to ensure that the psychological status of the child and parents or guardians requesting termination of life are taken into consideration when determining whether to grant the request; and

- c. provide in its next periodic report additional information on the implementation of laws and regulations on the termination of life on request.

Good

Ad. 35.

The Committee reiterates its recommendation that the State party strengthen its support to the National Youth Council and youth organizations. Furthermore, the Committee draws the attention of the State party to the recommendations adopted on the Committee's day of general discussion on the right of the child to be heard, held on 15 September 2006.

Moderate

RECOMMENDATIONS UN COMMITTEE ON THE RIGHTS OF THE CHILD 2009 TOPIC "CIVIL RIGHTS AND FREEDOMS"

No recommendations for the Netherlands.

The Committee adopted no recommendations under this title.

RECOMMENDATIONS UN COMMITTEE ON THE RIGHTS OF THE CHILD 2009 TOPIC "YOUTH CARE AND FAMILY LAW"

Ad. 40.

The Committee recommends that the State party conduct comprehensive research on the reasons behind the long waiting lists, and take steps to involve the families in preventing and solving their problems. The Committee also recommends that the State party implement community based programmes with a view to assisting the extended family in taking an active role, e.g. conference models, and provide parenting education in a culturally sensitive manner.

Bad

Ad. 42.

The Committee recommends that the State party evaluate the reasons behind the high number of placements and the long waiting lists, and establish a comprehensive strategy to address these issues, with the participation of children and their families. The State party should take into account the Committee's recommendations issued at the day of general discussion on Children without parental care, held on 16 September 2005.

Moderate

Ad. 44.

The Committee urges the State party to take immediate action to ensure that children in need of assistance are not placed in young offender's institutions.

Good

Ad. 46.

The Committee recommends that the State party take all necessary measures to prevent cases of illegal adoption, and raise awareness about the rights of the child from this respect as well, and eliminate “weak” adoptions in accordance with the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption.

Good

RECOMMENDATIONS UN COMMITTEE ON THE RIGHTS OF THE CHILD 2009 TOPIC “CHILDREN WITH DISABILITIES”

Ad. 50.

In the light of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96), article 23 of the Convention and the Committee’s General Comment No. 9 (2006) on the rights of children with disabilities (CRC/C/GC/9), the Committee recommends that the State party:

- a. take all necessary measures to ensure that legislation providing protection for persons with disabilities, as well as programmes and services for children with disabilities, are effectively implemented;

Bad

- b. develop and strengthen early identification programmes and early intervention programmes;

Moderate

- c. undertake awareness-raising campaigns on the rights and special needs of children with disabilities, encourage their inclusion in society and prevent discrimination and institutionalization;

Moderate

- d. provide training for professional staff working with children with disabilities, such as medical, paramedical and related personnel, teachers and social workers; and

Moderate

- e. ratify the International Convention on the Rights of Persons with Disabilities and its Optional Protocol, signed on 30 March 2007.

Moderate

RECOMMENDATIONS UN COMMITTEE ON THE RIGHTS OF THE CHILD 2009 TOPIC “RIGHT TO HEALTH”

Ad. 52.

The Committee recommends that the State party take appropriate measures to make sure that all children in its territory have access to basic health care.

Moderate

Ad. 54.

The Committee recommends that the State party allocate financial and human resources at all levels of the mental health care system and aim to shorten the waiting lists in order to ensure access to specialized services when needed.

Bad

Ad. 58.

In line with its previous recommendations, the Committee recommends that the State party take all necessary measures to prevent drug and alcohol abuse.

Moderate

Ad. 60.

The Committee recommends that the State party enhance its efforts to promote exclusive breastfeeding practices and comply with the International Code of Marketing of Breast-milk Substitutes.

Bad

RECOMMENDATIONS UN COMMITTEE ON THE RIGHTS OF THE CHILD 2009 TOPIC “POVERTY”

Ad. 19.

The Committee recommends that the State party, in accordance with article 4 of the Convention, allocate the maximum extent of available resources for the implementation of children’s rights, with a special focus on eradicating poverty and that it reduce inequalities across all jurisdictions. In this endeavour, the State party should take into account the Committee’s recommendations issued after the day of general discussion of 21 September 2007 devoted to “Resources for the rights of the child - responsibility of States”.

Bad

RECOMMENDATIONS UN COMMITTEE ON THE RIGHTS OF THE CHILD 2009

TOPIC “EDUCATION”

Ad. 62.

The Committee recommends that the State party:

- a. strengthen efforts to overcome the de facto ethnic segregation of school attendance by providing support for ethnically diverse schools and networks of cooperation among schools;

Bad

- b. ensure the right to education of all children by facilitating enrolment of children with missing or incomplete documents;

Moderate

- c. improve the safety situation at schools experiencing difficulties in this regard so that all children have access to safe schools and can learn without fear of violence and maltreatment; and

Moderate

- d. make sure that human rights and child rights education is included in school curricula at all levels.

Bad

RECOMMENDATIONS UN COMMITTEE ON THE RIGHTS OF THE CHILD 2009

TOPIC “PUBLIC SPACE AND RECREATION”

No recommendations for the Netherlands

The Committee adopted no recommendations under this title.

RECOMMENDATIONS UN COMMITTEE ON THE RIGHTS OF THE CHILD 2009

TOPIC “CHILD ABUSE”

Ad. 37

The Committee recommends that the State party prohibit corporal punishment by law and enforce the prohibition in all settings, including in the family, the schools and out of home placements. It also recommends that the State party conduct awareness-raising campaigns and parenting education programmes to ensure that alternative forms of discipline are used, in a manner consistent with the child’s human dignity and in conformity with the Convention, especially article 28, paragraph 2, while taking due account of the General Comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (CRC/C/GC/8).

Moderate

Ad. 38.

With reference to the United Nations Study on violence against children (A/61/299), the Committee recommends that the State party:

- a Take all necessary measures for the implementation of the recommendations contained in the report of the independent expert for the United Nations study on violence against children while taking into account the outcome and recommendations of the regional consultation for Europe and Central Asia, held in Ljubljana, Slovenia, from 5 to 7 July 2005. In particular, the Committee recommends that the State party pay particular attention to the following recommendations:
 - i. To prohibit all violence against children;
 - ii. To promote non-violent values and awareness-raising;
 - iii. To provide recovery and social reintegration services; and
 - iv. To develop and implement systematic national data collection and research;

Moderate

- b) Use these recommendations as a tool for action in partnership with civil society and in particular with the involvement of children, to ensure that every child is protected from all forms of physical, sexual and psychological violence and to gain momentum for concrete and, where appropriate, time-bound actions to prevent and respond to such violence.

Moderate

The Committee urges the State party to:

- a. establish mechanisms for monitoring the number of cases and the extent of violence, sexual abuse, neglect, maltreatment or exploitation considered by article 19, including within the family, in institutional or other care;

Good

- b. ensure that professionals working with children (including teachers, social workers, medical professionals, members of the police and the judiciary) receive training on their obligation to report and take appropriate action in suspected cases of domestic violence affecting children;

Good

- c. strengthen support for victims of violence, abuse, neglect and maltreatment in order to ensure that they are not victimized once again during legal proceedings; and

Bad

- d. provide access to adequate services for recovery, counselling and other forms of reintegration in all parts of the Kingdom.

Bad

RECOMMENDATIONS UN COMMITTEE ON THE RIGHTS OF THE CHILD 2009

TOPIC “JUVENILE JUSTICE”

Ad. 78.

The Committee recommends that the State party

- a. ensure the full implementation of juvenile justice standards, in particular articles 37, 40 and 39 of the Convention, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), in the light of General Comment no. 10 on children's rights in juvenile justice (CRC/C/GC/10);

Moderate

- b. consider reviewing its legislation with the aim to eliminate the possibility of trying children as adults;

Bad

- c. eliminate life imprisonment sentence of children; and

Moderate

- d. ensure that the deprivation of liberty of juvenile offenders is used only as a measure of last resort and for the shortest appropriate period of time.

Moderate

RECOMMENDATIONS UN COMMITTEE ON THE RIGHTS OF THE CHILD 2009

TOPIC “CHILDREN AND MIGRATION LAW”

Ad. 68.

The Committee recommends that the State party further reduce the use of aliens' detention for unaccompanied children and for families with children, further strengthen the measures already taken to prevent the disappearance of asylum seeking children, and provide culturally sensitive family services. .

Detention of minors: good

Good

Culturally sensitive family services: bad

Bad

Ad. 70.

In line with its previous recommendations, the Committee recommends that the State party withdraw the declaration concerning article 22 and take effective legal and other measures to ensure adequate protection of refugee and unaccompanied children and implement programmes and policies to ensure their access to health, education and other social services. The State party should take into consideration the Committee's General Comment no 6 on the treatment of unaccompanied and separated children outside their country of origin (CRC/GC/2005/6).

Bad

RECOMMENDATIONS UN COMMITTEE ON THE RIGHTS OF THE CHILD 2009 TOPIC "CHILD LABOUR"

Ad. 72.

In line with its previous recommendations, the Committee recommends that child labour laws be reviewed and implemented, labour inspectorates be strengthened and penalties be imposed in cases of violations in order to eliminate economic exploitation of children. The Committee further recommends that ILO Convention 182 on the Worst Forms of Child Labour and ILO Convention 138 on Minimum Age for Admission to Employment be applied in all areas of the State party.

Bad

RECOMMENDATIONS UN COMMITTEE ON THE RIGHTS OF THE CHILD 2009 TOPIC "CHILDREN AND INTERNATIONAL COOPERATION"

No recommendations for the Netherlands

The Committee adopted no recommendations under this title.

RECOMMENDATIONS UN COMMITTEE ON THE RIGHTS OF THE CHILD 2009

TOPIC “EXPLOITATION AND TRAFFICKING OF CHILDREN”

Ad. 74.

The Committee recommends that the State party:

- a. strengthen its efforts to reduce and prevent the occurrence of sexual exploitation and trafficking of children and child sex tourism, through, inter alia, undertaking a comprehensive study and data collection of the occurrence and the dimension of the problems and implement comprehensive strategies and policies;

Moderate

- b. strengthen cooperation with the authorities of countries from or to which children are trafficked in order to combat the phenomenon;

Moderate

- c. continue to sensitize professionals, parents, children and the general public to the problems of sexual exploitation of children, child trafficking and child sex tourism through education, including media campaigns;

Moderate

- d. take account of the outcome documents from the First, Second and Third World Congresses against Commercial Sexual Exploitation of Children, held in 1996, 2001 and 2008 respectively;

Moderate

- e. take appropriate legal and other measures to protect children who are victims of sexual exploitation and prostitution and prosecute perpetrators of sexual abuse and exploitation; and

Moderate

- f. train law enforcement officials, social workers and prosecutors on how to receive, monitor and investigate complaints in a child-sensitive manner.

Moderate

Ad. 76.

The Committee recommends that the State party take measures to protect children, including boys, against sexual exploitation, violence and all other forms of abuse.

Moderate

RECOMMENDATIONS UN COMMITTEE ON THE RIGHTS OF THE CHILD 2009 TOPIC “EXPLOITATION AND SALE OF CHILDREN”

Ad. 9.

The Committee recommends that the State party elaborate statistics on prosecution of offences, recovery and reintegration assistance, compensation for child victims and child sex tourism, as indicated in article 9, paragraphs 3 and 4 of the Optional Protocol.

Moderate

Ad. 11.

The Committee recommends that the State party take all necessary measures to ensure the implementation of the specific obligations arising from the Optional Protocol in its national strategies and programmes in consultation and cooperation with relevant stakeholders, by taking into account the outcome documents from the First, Second and Third World Congresses against Commercial Sexual Exploitation of Children (Stockholm 1996; Yokohama 2001; Rio de Janeiro 2008). In this regard, the Committee recommends that the State party ensure allocation of sufficient resources to ensure full implementation of all existing national strategies and programmes.

Moderate

Ad. 13.

The Committee recommends that the State party establish a coordinating body to coordinate and evaluate the State party's implementation of the Optional Protocol including at the local level, with active participation of children, including, inter alia, the Youth Council. Furthermore, it is recommended that the State party provide the coordinating body with specific and sufficient human and financial resources to enable it to be fully operational.

Moderate

Ad. 15.

The Committee recommends that the State party allocate adequate and earmarked resources for the development of training materials and courses in all parts of the Kingdom for all relevant groups of professionals including social workers, police officers, public prosecutors, judges, medical staff, immigration officials and other professionals involved in the implementation of the Optional Protocol. Furthermore, in light of article 9, paragraph 2, of the Optional Protocol, the Committee recommends that the State party make the provisions of the Optional Protocol widely known, particularly to children and their families, through, inter alia, school curricula and long-term awareness raising campaigns, including the media and training on the preventive measures and harmful effects of all offences referred to in the Optional Protocol.

Moderate

Ad. 17.

The Committee recommends that the State party strengthen the capacity of the police to receive and investigate complaints of sexual exploitation inter alia by increasing human and financial resources.

Good

Ad. 19.

The Committee recommends the swift passage of the Children's Ombudsman legislation in the Netherlands. The Committee recommends that this office be accessible to children and their representatives at the national and local levels, that it conform with the Paris Principles and take into account General Comment No. 2 (2002) on the Role of Independent National Human Rights Institutions in the Protection and Promotion of the Rights of the Child (CRC/GC/2002/2).

Furthermore, the Committee recommends that in addition to investigating complaints, the Children's Ombudsman have the responsibility to monitor the implementation of and promote the Convention and the Optional Protocol.

Good

Ad. 21.

The Committee recommends that the State party strengthen its efforts to reduce and prevent the sale of children, child prostitution and child pornography, through, inter alia, ensuring a uniform register and undertaking a comprehensive study of the occurrence and the dimension of the problem, design and implement comprehensive preventive strategies and policies, ensure the prosecution of perpetrators and train law enforcement officials, social workers and prosecutors on how to receive, monitor and investigate complaints and prosecute perpetrators in a child-sensitive manner.

Moderate

Ad. 23.

The Committee recommends that the State party undertake measures to prevent child sex tourism, in particular by earmarking additional funds for public campaigns, including the participation of children, for this purpose. The State party should also, through relevant authorities, strengthen cooperation with the tourism industry, NGOs and civil society organisations in order to promote responsible tourism by the dissemination of the Code of Conduct of the World Tourist Organisation among employees within the tourism industry as well as awareness raising campaigns for the general public.

Moderate

Ad. 25.

The Committee recommends that the State party take further measures to bring its Criminal Code into full compliance with articles 2 and 3 of the Optional Protocol. In particular, the Committee recommends that the State party criminalise the production or dissemination of materials advertising the sale of children, child prostitution or child pornography.

Bad

Ad. 27.

The Committee recommends that the State party take all necessary measures to ensure that the national legislation complies with articles 2 and 3 of the Optional Protocol, in particular, that the definition of sale (article 2 (a) and improperly inducing consent in cases of adoption (article 3, para. 1 (a) (ii) as stipulated in the Optional Protocol are incorporated in the legislation.

Bad

Ad. 29.

The Committee recommends that the State party

- a. Ensure specific shelter and care facilities for child victims;
- b. Improve the safety of the reception centres for unaccompanied foreign children;
- c. Ensure special attention to the children in a manner appropriate for their age, and provide support services when hearing victims;
- d. Enhance child rights knowledge and skills of professionals in shelters and care facilities dealing with children who are victims; and
- e. Take into consideration the Committee's General Comment no 6 on the treatment of unaccompanied and separated children outside their country of origin (CRC/GC/2005/6.).

Moderate

Ad. 30.

The Committee welcomes the State party's support for international cooperation projects relating to the Optional Protocol, and urges the State party to continue to strengthen its efforts in this regard.

Moderate

Ad. 31.

The Committee encourages the State party to continue its efforts to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism.

Moderate

Ad. 32.

The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, inter alia, by transmitting them to the members of the government at national and local levels and Parliament for appropriate consideration and further action.

Moderate

Ad. 33.

The Committee recommends that the report and written replies submitted by the State party and related recommendations (concluding observations) adopted be made widely available, including through the internet (but not exclusively), to the public at large, civil society organizations, the media, youth groups and professional groups in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring. Furthermore, the Committee recommends that the State party make the Optional Protocol widely known to children and their parents through, inter alia, school curricula and human rights education.

Moderate

RECOMMENDATIONS UN COMMITTEE ON THE RIGHTS OF THE CHILD 2009 TOPIC “CHILD SOLDIERS AND CHILDREN IN WAR”

No recommendations for the Netherlands

The UN Committee did not adopt recommendations under this title, as in 2014 it is the first time that the Netherlands reported on the Optional Protocol on the Involvement of Children in Armed Conflict.

RECOMMENDATIONS UN COMMITTEE ON THE RIGHTS OF THE CHILD 2009 TOPIC “FOLLOW UP AND PUBLICATION”

Ad. 83.

The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations throughout the Kingdom, inter alia, by transmitting them to relevant Ministries and to local authorities, for appropriate consideration and further action

Moderate

Ad. 84.

The Committee further recommends that the third periodic report and written replies submitted by the State party and related recommendations (concluding observations) that it adopted be made widely available to the public at large, civil society organizations, youth groups, media and other professional groups and children in order to generate debate and awareness of the Convention, its implementation and monitoring.

Good

Colophon

The 4th NGO Report 'Children's Rights in the Netherlands: Update 2014' is a publication of the Dutch NGO Coalition for Children's Rights

The Dutch NGO Coalition for Children's Rights:

UNICEF Nederland



Stichting Kinderpostzegels Nederland



Bernard van Leer Foundation



ieder(in)



Augeo Foundation



Terre des Hommes



NJR



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