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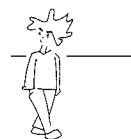
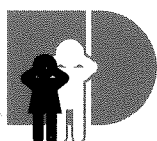
Kinderrechtencollectief

Dutch NGO Coalition for Children's Rights

CHILDREN'S RIGHTS AS A MIRROR OF DUTCH SOCIETY

NGO report on the implementation of the UN-Convention on the Rights of the Child in the Netherlands

—— Including the report on the consultation of young people in the Netherlands on their rights ——



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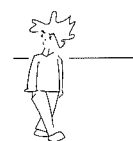
— Including the report on the consultation of young people in the Netherlands on their rights —

Report I

**NGO Report on the implementation of the UN-Convention
on the Rights of the Child in the Netherlands**

Report II

Report on the consultation of young people in the Netherlands on their rights



DUTCH NGO COALITION FOR CHILDREN'S RIGHTS (Kinderrechtencollectief, KRC)

The Dutch NGO Coalition for Children's Rights was set up in July 1995 by a group of independent non-governmental organisations:

- Defence for Children International (DCI)
- Netherlands Institute of Care and Welfare (NIZW)
- UNICEF The Netherlands
- Dutch Association of Children's Rights Shops.

The KRC's primary aim is to ensure that the tasks set forth in the Convention on the Rights of the Child are carried out and its challenges met, so that the Convention becomes part of Dutch life. About 60 organisations and individuals are, in one way or another, currently working with the KRC to ensure that children actually enjoy the rights to which they are legally entitled. They coordinate and exchange information about the Convention and, together, take appropriate concrete action.

The KRC's primary focus is on:

- providing information about the Convention to a range of target groups;
- encouraging and assisting different groups to rely on rights contained in the Convention so that those rights take effect in practice;
- promoting the development of case law based on the Convention;
- encouraging young people to take part in certain activities;
- establishing or increasing contact with non-governmental organisations in other countries to promote discussions about the Convention;
- monitoring reports on the implementation of the Convention.

The KRC meets regularly during the year.

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Report I

**NGO report on the implementation of the UN-Convention on the
Rights of the Child in the Netherlands**

The following organisations have made known their support, in general terms, for the content of this NGO report on the implementation of the UN Convention on the Rights of the Child in the Netherlands.

- * Adoption Centre, Utrecht University
- * AKJ, Child Care Advice and Complaint Bureau
- * Artist trade union of the CNV
- * Centre for educational counselling in The Hague
- * Children at risk
- * Defence for Children International Section The Netherlands
- * Dutch Association of Children's Rights Shops
- * Dutch Foundation for the Prevention of Child Abuse
- * Dutch Youth Group
- * Family Council of the Netherlands
- * Halt Nederland
- * Humanist Committee on Human Rights
- * Jankor
- * Jubilee Campaign (The Netherlands)
- * K&O - Vereniging voor Jeugdwelzijnswerk, Association for Youth Work
- * MUTANT, Agency for quality in methodology and management
- * Nationaal Fonds Kinderhulp, National Fund Child Aid
- * National Youth Fund Jantje Beton
- * Netherlands Institute for Care and Welfare (NIZW)
- * NBLC Association of Dutch Public Libraries
- * Paediatric Association of The Netherlands
- * Red Cross Netherlands
- * Right of Way for Kids
- * Save the Children (The Netherlands)
- * Scouting Nederland
- * Terre des Hommes (The Netherlands)
- * Trans Act, Netherlands centre for gender issues in health care and prevention of sexual violence
- * Youth Information Netherlands
- * UNICEF The Netherlands
- * Welzijns Organisatie Centrum, Welfare Organisation Centre
- * Wereldkinderen, Netherlands Intercountry Child Welfare Organisation

PREFACE

This is the report from the Dutch NGO Coalition for Children's Rights (Kinderrechtencollectief, KRC). It discusses the implementation of the UN Convention on the Rights of the Child (Convention) in the Netherlands.

This report was drawn up in two stages. In March 1997, two years after the Convention on the Rights of the Child came into effect in the Netherlands, the KRC submitted its first pro-active report to the Dutch government and to the Committee for the Rights of the Child in Geneva. The Dutch government completed its report in May of that year. The Committee is likely to discuss the NGO report in the spring of 1999. In view of the time that has passed, the KRC has decided to draw up a supplement to its NGO report: update January 1999. All recommendations in the report remain effective. Any developments have been outlined. In some cases, developments have led to the amendment or addition of recommendations.

1. The NGO report contains the views of the KRC on the progress of the implementation of the Convention. The KRC has decided to present a pro-active report rather than a form of shadow report, since this compelled the KRC to study what it believes are the main problems with respect to children's rights in the Netherlands. The KRC also refrains from commenting on the government's report in the update of January 1999, in view of the lack of substance in said report.
2. The Convention places much emphasis on children's participation in society. The obvious course of action would be for children to be involved in the reporting on the Convention in some form. On the basis of an information brochure about the rights of children in the Netherlands, the KRC asked various groups of young people for their opinion on their legal position. The results of this national youth consultation are presented in report II. The KRC will present these views to the Committee before the Committee discusses the Dutch government report.
3. The structure of this report is in line with the guidelines for NGO reports. In each section, the trend is outlined first and the KRC then gives a brief outline of what the government is doing or planning to do on the issue, followed by the KRC's recommendation. If there have been major developments in the past 21 months, an update January 1999 has been added. In order to make the report more readable, each paragraph starts with an unofficial summary of the articles of the Convention.
4. This report concerns only the main developments and problems relating to the implementation of what the KRC considers to be the key rights under the Convention. The fact that no specific mention is made of other Convention-based rights, for example the article 31 right to play, does not mean that the Dutch government has fully implemented them in the Netherlands. The KRC stresses that the Dutch government remains under an obligation to *fully* implement *all* the Convention's provisions.
5. This report is concerned with the implementation of the Convention in the Netherlands, that is the territory of the Kingdom of the Netherlands located in Europe. It does not relate to the situation of children in the two other parts of the Kingdom, i.e. the Netherlands Antilles and Aruba, in the Caribbean. It is the Kingdom of the Netherlands that is a party to the Convention.

6. With respect to terminology, we should note the following. The terms child, minor, youngster/young people are used interchangeable. They all mean the same: a person under 18 years of age.
7. The NGO report is supported by the organisations described at the beginning of the report. These organisations support the content of this report in general terms.
8. The report was drawn up by an editorial committee, appointed by and composed of the KRC. This editorial committee has drawn up the text in close cooperation with all the organisations involved. The relevant organisations were asked at the end of 1995 to present themes for this report. The final responsibility for this report rests with the founder members of the KRC: Defence for Children International Section the Netherlands, UNICEF The Netherlands, the Netherlands Institute of Care and Welfare (Nederlands Instituut voor Zorg en Welzijn, NIZW) and the Dutch Association of Children's Rights Shops (Landelijke Vereniging van Kinder- en Jongerenrechtswinkels).
9. The KRC is looking forward to an interesting dialogue between the Committee and the Dutch government, which will help to ensure that the rights laid down in the Convention will be realised for all Dutch children. We hope this NGO report will make a substantial contribution to this goal.

The editorial committee of the Dutch NGO Coalition for Children's Rights

Stan Meuwese	Defence for Children International Section the Netherlands (March 1997, January 1999)
Karin Kloosterboer	Defence for Children International Section the Netherlands (March 1997)
Bert van Ruitenbeek	UNICEF-The Netherlands (March 1997)
Lennie Haarsma	The Netherlands Institute for Care and Welfare (NIZW) (March 1997, January 1999)
Maud Droogleever Fortuyn	Dutch Children's Rights Shops (March 1997)/ UNICEF-The Netherlands (January 1999)
Jacqueline Smith	Defence for Children International Section the Netherlands - University of Utrecht, Ne- therlands Institute of Human Rights (SIM) (March 1997)
Isabeth Mijnaerends	University of Leiden (March 1997)
Majorie Kaandorp	Defence for Children International Section the Netherlands (January 1999)
Jeanne Roefs	UNICEF-The Netherlands (January 1999)
Ingeborg Galama	Dutch Children's Rights Shops (January 1999)
Annemieke Wolthuis	Defence for Children International Section The Netherlands (January 1999)

INTRODUCTION

Growing up below sea level

The Netherlands is a good country to grow up in. Yet it is important to remain watchful. On the one hand its democratic legal system offers an enormous degree of freedom. Traditionally, there has been a great deal of social engagement between the various groups of the population, resulting in a social structure in which most of the basic rights of children are sufficiently guaranteed. On the other hand the social divide is becoming a permanent feature of Dutch society. Youth crime and the marginalisation of young people makes it painfully clear that certain groups of youths no longer feel involved in *their* society. Very high population density and a strong economic growth with ensuing large-scale infrastructure projects are putting the living conditions of young people under a great deal of strain. Research among young people also shows that as a result many are very concerned about their future or concentrate on short-term pleasure in the form of drug-use or other experiences of high-risk 'kicks'. For this reason this report focuses on the future. Unfortunately, political decision-making is often swayed by the issues of the day, while the interests of our children are served primarily by policy decisions based on long-term effects. The best investments in any society are investments in the youngest children. This is where the foundations are laid for their future life and welfare. Yet it is very difficult to gain insight into the amount of time and money spent on children and young people.

NGO report

This report is intended as a constructive contribution from a number of NGOs - united in the KRC - to analyze child law and policy¹ with the government and to make recommendations for improvements. The Convention can already almost be regarded as a success, as it has united numerous non-governmental organisations in the joint effort to create conditions for realising the children's rights formulated in the Convention. This report will hopefully also result in a more intensified dialogue and cooperation with the relevant government bodies in the implementation of the Convention. It has proven to be an effective instrument mainly because of the obligation to report to the Committee for the Rights of the Child in Geneva.

The Dutch government report: an opportunity missed

In May 1997, the Dutch government sent its report on the implementation of the UN Convention on the Rights of the Child in the Netherlands to the Committee for the Rights of the Child. The KRC is disappointed at the report.² Disappointed because the government failed to take the opportunity to put together an effective story about Dutch young people, the perspectives and problems, the vulnerabilities and challenges, the potential and the frustration. It is a dry summary of laws and directives. The report provides very few figures and fails to provide an effective assessment of the situation of young people in the Netherlands. An opportunity missed.

Children's rights as a mirror

The position of children, which is by definition vulnerable, requires constant attention, research and involvement on the part of the public, non-governmental organisations and governments. Children are not potential 'problems', but welcome fellow citizens and we owe it to them to listen to them and make sure that they too can work on and participate in the creation of a society we all want to live in: *children's rights as a mirror of Dutch society*.

1 GENERAL MEASURES OF IMPLEMENTATION

1.1 Familiarity with the Convention

Article 42 CRC - State Parties are to make the Convention widely known to children and adults alike.

Article 44 par.6 CRC - State Parties shall make their reports widely available to the public in their own countries.

Introduction

The Convention requires the government to provide both children and adults with information on the content of the Convention. On 24 April 1996, the Dutch government launched the nationally organised information campaign with the slogan 'By talking you can do yourself justice'. The campaign is aimed at children between 10 and 14 years of age.

Trend

The initiative for an information campaign on this issue is laudable. However, the campaign is the only source of information on the Convention supplied by the government. It is not clear how many children have been reached via this campaign. The campaign has a number of weak points:

- A lack of willingness among the majority of the 600 local authorities to inform children and organisations working with children about the Convention at local level.
- The information campaign is a one-off. But informing children of their rights is a continuous affair, in view of the campaign's target audience.
- The target group of the campaign has been incorrectly limited to children between 10 and 14 years of age.
- There is no structure to give shape to the information supply on children's rights.
- The campaign is not equipped or is insufficiently equipped to provide information to parents/carers and those who deal with children on a professional basis, such as teachers, care workers, doctors, judges and lawyers³.

Update January 1999

In May 1997, the Dutch government sent the Dutch report on the rights of the child in the Netherlands to the Committee for the Rights of the Child in Geneva. The report was published only in English and has not been translated into Dutch. Nor was the report been made accessible for children and youngsters. The government has made very little effort to publicise the report widely within the Netherlands. It was only sent to organisations such as the Kinderrechtencollectief with the request to distribute it among their supporters.

The information campaign 'By talking you can do yourself justice' to publicise the convention has also come to a complete standstill.

Recommendations

The KRC urges the Dutch government:

- To continue to supply children with information on the Convention.
- Also to inform children younger than 10 or older than 14 about the Convention.
- To make specific information about the Convention available to parents/carers and

those professions working with or on behalf of children.

- To conduct a survey among local authorities to find out what they know about the Convention and which measures they have introduced to apply the Convention in practice at a local level.
- To translate the government report on the rights of the child into Dutch in a way intelligible to children and adults.

1.2 Juridical mechanisms to speed up implementation

Introduction

In a broad range of areas, children are increasingly considered fully-fledged participants in society. People in the Netherlands are now talking about a 'negotiation household' as opposed to an 'order household'. This increase in involvement often turns out to be 'illusory involvement'. When it comes down to it, the adults are usually still the ones making the decisions. Both in the home and at school, and also in court.

Trends

Legal procedures

If the rights of Dutch minors - as laid down in the Convention and Dutch legislation - are violated, the minors are generally dependent on their legal representatives (parents) to take action to uphold them, since minors have no legal capacity. In the event of a legal procedure, the legal representative will act on behalf of the child. But if the case involves a conflict between the child and its legal representative, or a conflict between the child and the relatives of its legal representative, or in the event that the legal representative refuses to act on the child's behalf, the Dutch minor has very few options (see addendum 1).

Interest representation for young people and advice on youth policy

In order to implement and test the Convention, it is vital that organisations in Dutch society continue to keep a critical eye on what the government is doing in the fields of legislation and policy-making. In light of this, it is hard to believe that at the time of the Dutch ratification of the Convention, the government decided to dissolve the Council for Youth Policy. Between 1980 and 1996, this Council gave the government advice, at their request and on its own initiative, on specific policies relating to the social position of young people, aimed at creating the conditions for their optimum development. The explicit task of keeping an independent, critical and cross-departmental eye on the policy-making related to young people has not been taken up by any other organisation.⁴

Recommendations

The KRC urges the Dutch government:

- To establish a mechanism to allow children to bring proceedings before an independent third party: a judge. When their Convention-based rights have been violated, a general access to legal procedure should be encapsulated in trial guarantees.⁵
- To guarantee support for the legal aid system for children in the Netherlands.
- To enable existing organisations to take over the tasks of the Council for Youth Policy or to set up a new (advisory) body to ensure that children are sufficiently taken into account in policy-making. See 1.3.

1.3 Children's ombudswork

Introduction

Children's ombudswork is aimed at creating conditions enabling children to stand up for themselves and thus realise their rights. Taking children seriously is an essential prerequisite to achieving this.

Children's ombudswork turns out to be an 'umbrella' concept. In the Netherlands it is taken to mean a variety of functions and the boundaries of what can still be regarded as children's ombudswork are somewhat unclear. There are several organisations active in this field in the Netherlands. Together they provide information, advice and individual legal aid for children and young people and protect their interests. Organisations active in legal aid and interest-protection, in particular, receive very little funding from the Dutch government.

Trend

Since 1996, a number of private organisations have once again been researching the possibilities and desirability of creating a children's ombudsperson. Options being discussed are a national children's ombudsperson on television together with regional children's ombudspersons. The Dutch government is not for the moment planning to install a national children's ombudsperson with clearly defined responsibilities. It does seem willing to temporarily co-finance pilot projects for regional children's ombudspersons, provided they are in line with the present youth (assistance) policy.

Update January 1999

Six pilot projects were launched in the autumn of 1997. These projects did not in the end become regional children's ombudsmen emphasising the legal support of young people. One of the aims is to boost social participation by children.

The government has spoken out against a national and legally supported children's ombudsman and states that the *Kinderrechtswinkels*, which provide legal aid to minors, fulfil the tasks of an ombudsman (see sections 68 and 69 of the government report). The Justice Ministry has decided to fund the Children's legal aid centres (*Kinderrechtswinkels*) in 1999. The KRC sees this as a good first step. However, this does not diminish the fact that an additional national, legally supported Children's ombudsman would have more (legal) potential to tackle structural violations of the rights of children and devote structural attention to the implications of new legislation and regulations for children and young people.

Recommendations

- The KRC urges the Dutch government to create and fund a children's ombudsperson, following the Norwegian example.
- The KRC calls on the Dutch government to financially support and strengthen the local and regional network of existing organisations. In particular, legal aid for and promotion of the best interests of minors should be strengthened. The trend of cooperation between these organisations should be supported.
- The KRC calls on the Dutch government to provide structural funding for the *Kinderrechtswinkels*.

1.4 Budget spending

Article 4 CRC - The State's obligation to translate the rights in the Convention into reality.

Introduction

What do children cost Dutch society? The government takes care of the costs of education, health care and youth social work, contributes to the costs of child care and leisure facilities. Some costs are borne directly by the national government, other costs are borne mainly by provincial and local authorities. Some costs are borne by independent public funds and organisations, and in some cases there are contributions from parents (for their own children). Families with children receive family allowances.

Trend

The Netherlands is an ageing society. Spending for the elderly is increasing rapidly. It will be at least another 10 to 20 years before this trend will change and Dutch society will begin to show relative rejuvenation.

Recommendation

■ The KRC urges the Dutch government to provide a clear picture of society's spending on children. In line with the practice in Norway (which is also being considered in Sweden), an overview of spending on behalf of children should be provided with each annual state budget. This would also make it possible, after a few years, to establish trends in spending patterns.

1.5 International responsibility

Article 4 CRC - The State's obligation to translate the rights in the Convention into reality.

Introduction

The former Development Cooperation Minister, Jan Pronk, has over the past few years been a strong advocate of an international development policy that gives precedence to (investments in) children. The Dutch government has internationally taken the lead with the memorandum 'Policy in Infancy' (February 1994), in which the articles of the Convention were compared to the development cooperation policy, followed by the conference 'Children in Development' (June 1996). The Dutch government also strongly advocates taking active steps to implement the 20/20 initiative agreed during the Social Summit in Copenhagen - to secure more funds for basic provisions primarily aimed at improving care for mother and child.

Trend

While the Dutch government in the past has made and still is making a considerable investment in development cooperation, we have noted a number of worrying developments likely to impact in the near future. There is the question of the extent to which international development policy has been coordinated with policies adopted by other departments. The re-evaluation of foreign policy, which has resulted in a strong integration between the various departments, could lead to a reinforcement of the 'enlightened self-interest'. The current development cooperation policy is also largely

reliant on the personal efforts and qualities of the minister.

Right now a strong emphasis on content in development cooperation policy remains essential in view of another trend: increasing attention for children in particularly difficult circumstances, which threatens investments in basic facilities. Many of these 'visible emergencies' (such as child-soldiers, sexually or economically abused children) are the result of 'silent emergencies', such as a lack of basic facilities (rights) in the fields of health care, education and nourishment. There are feasible and affordable solutions to ensure that these basic rights are respected, while curative care for street children or traumatised children, for instance, is very costly and complicated.

Update January 1999

During the formation of the new coalition cabinet, it was decided to keep a separate minister for development cooperation. However, it remains to be seen how autonomously the minister for Development Cooperation will be able to operate, given that the Foreign Affairs minister, as coordinating minister responsible for the foreign policy, has been given additional powers. It is as yet unclear whether the new Development Cooperation minister will continue the policy of her predecessor, which devoted considerable attention to (investments for the benefit of) children. With spending on development cooperation amounting to 0.8% of GNP, the Netherlands will be one of the few countries in the coming years to continue to exceed the norm of 0.7% of GNP agreed by the OECD in 1970.

Recommendations

- The KRC urges the new minister for development cooperation to continue to place sufficient emphasis on the problems of children in developing countries.
- The KRC calls on the government to continue to emphasise, both in financial and in substantive terms, prevention in the form of support for the basic facilities and rights of children.
- The Netherlands has taken some good initiatives to tackle child labour (Amsterdam Labour Conference, February 1997). The KRC calls on the government to intensify this involvement on an international level in the coming years, particularly in view of the new ILO treaty on extreme forms of child labour.

2 GENERAL PRINCIPLES

2.1. The best interest of the child¹

Article 3 CRC - All actions concerning the child should take full account of his or her best interests.

Introduction

In its explanatory memorandum to the act on ratification of the UN Convention on the Rights of the Child, the Dutch government states (parliamentary document 22855 (R1451), no. 3, page 15) that the interests of the child as formulated in article 3 does not have absolute prevalence over other interests. There may be situation in which other interests, such as justice in society or equal treatment of men and women, are equally important. 'However,' the Dutch government states, 'it can be considered in accordance with the intention of the convention that, in the event of a conflict of interests, the interests of the child should as a rule be decisive'.

Trend

A recent letter (9 December 1998, no. 733417/98/DVB) from the Justice Ministry to UNICEF in the context of Dublin-claimers - including children - being literally on the street, is striking in this respect. This letter sets the position of the children of asylum seekers and the cautious upholding of immigration policy against the individual interests of the child. The Justice Ministry thus creates a conflict of interests between immigration policy and the interests of the child. Individual children can be put out on the street without food or education in order to uphold immigration policy. However, the KRC believes it could also be said that the interests of the child should be incorporated into a careful upholding of the immigration policy for minors. The KRC's opinion in this respect is supported by the fact that the immigration policy for children is partly based on article 22 of the UN Convention on the Rights of the Child. And it is with respect to this article in particular that the Dutch government issued an interpretative statement when approving the UN Convention on the Rights of the Child.

However, the situation is more complicated when it comes to the relationship between immigration policy and the interest of the child. In summary proceedings initiated by the Gümüs family, the UN Convention on the Rights of the Child was also invoked for the benefit of the underage children (Ruling of the President of the Amsterdam District Court, 10 September 1996, AWB 96/7191, 96/7195, 96/7193 VRWET, published JV, 1997, no. 11). This case, which received considerable public and political attention in the Netherlands, related to the extradition of a Turkish family who had lived in the Netherlands for eight years, with the youngest child, Samet, having been born in the Netherlands in 1990. The two children (the oldest, Ramazan, was 13) went to school in the Netherlands and were well established in their neighbourhood, where their father earned the family income in his tailor's shop. In its ruling, the court found that the plaintiff had not substantiated the claim that a return to Turkey would be damaging to the extent that this could not be reasonably demanded. The court furthermore ruled that the Dutch (immigration) law did not contravene the provisions of the

¹ Section 2.1 has been added to the NGO report in a revised version.

UN convention on the Rights of the Child with respect to the interests of the child. This interpretation of the UN convention turns out to be nonsensical. According to article 3, the issue is not whether measures taken with respect to children contravene the interests of the child (a double negation therefore), but rather that the measures are in the interest of the child (a positive criterion). This court ruling gives an unjust interpretation of the Convention and thus sets a bad trend. The Convention - including article 3 - was not written as a kind of safety net for children when their position is threatened. The Convention rather represents a positive commitment on how the government, parents and other carers should act. See also addendum 3.

Recommendations

The KRC advocates that:

- The Dutch government takes the interests of the child seriously as a primary consideration and refrains from creating conflicts of interest between the interests of the child and other considerations;
- The Dutch government uses the interests of the child as a positive criterion when executing policy (including immigration policy).

2.2 Participation

Article 12 CRC - The child's right to express an opinion, and to have that opinion taken into account, in any matter or procedure affecting the child.

Introduction

The central issue in participation should not just be children's influence on power, but also respecting young people and taking them seriously. This allows them to gain learning experiences, realise they are valuable and thus also feel more involved in their environment and willing to work on its behalf. This results in the positive forces of children being emphasised rather than their problematic aspects.

Trend

Following the ratification of the Convention, the Dutch government has cooperated in the encouragement of participation. Tangible examples of this are the campaign 'Talking brings you your right' (see 1.1), the organisation of a National Youth Debate between young people and politicians and the activities of a commission to study opportunities for youth participation at local level (Groenman Commission). And yet the KRC cannot avoid the impression that the government still sees participation too much as an 'obligation' rather than a challenge and an opportunity which may - besides yielding quality improvement - also form an important cornerstone in preventive youth policy. According to the KRC this requires an approach including constant careful checks, for each field of policy, to establish the effect of policy plans on the well-being of children (a special children-test). This would ensure that participation would not be used merely as a palliative or to boost the image of politicians.

Update January 1999

The government is making a small financial contribution to a two-year experiment, 'COME ON!-Youth Ombudsman Work', which was launched in the autumn of 1997

(see addendum 4). The project aims to be low threshold and, among other things, boost children's social participation. The projects offer children support on a local level with their questions and for plans and initiatives and as a result can make a considerable contribution to successful social participation by youngsters. Solutions are sought together with youngsters. The projects have been started in six regions. Some projects combine various organisations for children and youngsters, such as the children's help line *Kindertelefoon* and Youth Information Points (JIPs). Depending on the results of the experiment, the government will continue to make a financial contribution in future.

Recommendations

The KRC urges the Dutch government:

- To further encourage evaluation and research into existing and new forms of participation.
- To base its participation policy on listening to children and to deal with children's opinions seriously.
- To make use of the inter-departmental working group set up for the government report, in order to incorporate participation in the policies of their own ministries.

2.3 Local youth councils

Article 12 CRC - The child's right to express an opinion, and to have that opinion taken into account, in any matter or procedure affecting the child.

Introduction

Youth participation as a part of municipal policy is relatively new. However, there is increasing interest in youth participation both at national and at local level.⁶

Local authorities are focusing on both social and political participation. The available data provide insufficient insight into the best format for youth participation.

Trend

Many local authorities have recently been looking for the best possible format for youth participation. In practice, there are a number of different options: social or political, structural or incidental (project-based), educational or aimed at influencing power, only for minors or for those over 18, aimed at different subjects and authorities (consultation, advice, discussion, joint participation). The Dutch government provides, in particular, for political participation via youth community councils. Young people from the most demanding types of secondary education ('HAVO/VWO') are the ones who are primarily involved in these councils.

Update January 1999

In the past few years, various children's and youth councils have been set up and consulted by local, provincial and national authorities. A study commissioned by the KRC on the functioning of local youth councils has resulted in eight key rules. The KRC believes it would be beneficial if the municipalities were to take these rules into account when setting up youth councils. The key rules have been included in addendum 5 for information purposes.

During the Dutch presidency of the European Union (first half of 1997), the Rotterdam City Council, with support from the Dutch government and the European Commission, organised an international conference on youth participation at a local level. The recommendations, adopted by the 100 youngsters from around Europe who participated in the conference, have been included in addendum 6 to this report.

On 22 April 1998 (shortly before the national elections), the State Secretary for Public Health, Welfare and Sports published a policy memorandum on youth participation which, although heartily supporting youth participation, failed to introduce any compulsory instruments to enforce this on a local level. A national structure to encourage youth participation is being considered. The advisory committee on local preventative youth policy (Groenman committee) has discussed youth participation at municipal level in the same cordial yet noncommittal way in the various reports it has published in the past few years. One of the objectives of the committee is to support local councils in their policy regarding child and youth participation.

Recommendations

- Several of the reports published by the Groenman committee refer to the fight against nuisances caused by youngsters as a reason for the installation of child and youth councils. The KRC stresses that participation is not a tool against public nuisance or criminality, nor should it be used as such. Participation is a principle in itself and a civil right.
- The KRC calls on the Dutch government to follow, research and encourage the developments related to local youth councils at local authority level. In addition the KRC calls on the Dutch government to carry out research into other ways in which young people would participate more fully in society, and to encourage these.

3. CIVIL RIGHTS AND FREEDOMS

3.1 Social legal parenthood

Article 7 CRC - The right to have a name from birth and to be granted a nationality.

Article 8 CRC - The State's obligation to protect and, if necessary, re-establish the basic aspects of a child's identity (name, nationality and family ties).

Introduction

An increasing number of children in the Netherlands are born into a situation other than the traditional family: man - woman - possibly another child. Nowadays same-sex couples living together and single people are also raising children ('social parenthood'). Personal and family law tries to regulate all these varieties in the best possible way but they are, by definition, one step behind the facts.

Trend

The Dutch government has for some time now been trying to adjust the legislation to the developments in this field.⁷

Following recommendations from three advisory councils to give legal form to social parenthood⁸, at the end of 1996 the Dutch Family Council presented a proposal on new family law⁹. The aim of the proposal is to put the legal protection of adults and children in alternative lifestyles on an equal footing with that of those who grow up in a traditional family.

Update January 1999

Four laws coming into effect (on 1 January 1998 and 1 April 1998) is a temporary completion of the large-scale legislative operation in family law. The legal position of children growing up in alternative lifestyles has been strengthened considerably but is not yet optimal. The revised parentage law finally removes the distinction between legitimate and illegitimate children for good. However, in the case of alternative lifestyles, it is difficult (and sometimes impossible) to make effective provisions for the event that one of the parents dies. After all, it is not possible, as in the case of acknowledgement, to have the new legal figure joint custody for a parent and their partners in place before the birth of the child. The KRC would very much like to see this possibility introduced.

Recommendations

- The KRC calls on the Dutch government to ensure that the legal form of social parenthood is such that children in alternative lifestyles have a legal protection comparable to that of children in traditional families. In this context, the government should also ensure that the interests of the child are always paramount.
- The KRC urges the Dutch government to put the interests of the child first when preparing regulations in this field and not to put these interests automatically on an equal footing with those of the parents and carers.

3.2 Modern reproductive techniques

Article 7 CRC - The right to have a name from birth and to be granted a nationality.

Article 8 CRC - The State's obligation to protect and, if necessary, re-establish the basic aspects of a child's identity (name, nationality and family ties).

Introduction

The development of modern reproductive techniques means that children are born to parents who are not their biological parents.

Trends

In modern reproductive techniques such as artificial insemination (AI), test-tube fertilization (IVF) and ICSI, it is no longer simply the biological-genetic parents who will also have the responsibility of raising the child; a third party is now often involved. This has brought to the fore the question of the child's interest in knowing the identity of his/her biological parent(s). Regulations in this field established so far or being developed - new parentage law, a draft law on artificial insemination donors (AID) - are characterised by a trend towards more importance being attached to providing children with information about their biological parent(s).

Update January 1999

The draft law on donor information artificial insemination has been extended to include ovum and embryo-donation. This can be considered an improvement on the old draft law (which related solely to sperm donation), as a child conceived through any form of genetic material donation has to be granted access to information on their genetic descent. It is unfortunate, however, that the draft law gives children conceived with the aid of donated genetic materials the opportunity to obtain personally-identifying information about the donor, also without the donor's consent, only under extremely limited conditions.

With respect to surrogate mothering, it appears that adoption by the commissioning parents is made increasingly difficult by the (court's) refusal to take away the surrogate mother's parental rights as soon as the child can be adopted by the commissioning parent(s). The KRC states that it is questionable whether a child that is the genetic descendant of one woman, but born by another woman (the surrogate), benefits if adoption by the genetic (commissioning) mother is refused.

Recommendations

- The KRC urges the Dutch government - in accordance with article 3 and article 8 of the Convention - to introduce legislation requiring children to be given the opportunity to find out about their parentage. There should be a careful registration of the biological (therefore filial) parents of the child - to be conceived. Regardless of the permission of the natural parent, the child should be allowed to view this registration at a time when he/she is ready to do so.
- The KRC calls on the Dutch government to develop adequate legislation focusing on the rights of children in the application of modern reproductive techniques. A more detailed determination of the concept 'parents' is essential in this respect and this should be done partly on the basis of the child's right to protection of its family life (article 16).

3.3 Access to information and the role of the media

Article 17 CRC - The role of the media in disseminating information to children that is consistent with moral well-being and knowledge and understanding among peoples, and respects the child's cultural background. The State is to take measures to encourage this and to protect children from harmful materials.

Introduction

Information is important to both the personal development of the child and to his/her orientation in society. Children cannot participate fully in society without it. Children are active seekers of information. Parents are their primary source of information, to which later relatives, friends, teachers and other professional educators are added.

Children have a right to information. This means that the government has an obligation to establish a mechanism to make available complex information about society. Good quality, comprehensible and impartial information is a pre-requisite to allowing children to participate in a democratic society; those who do not know the rules of the game cannot play. The preventative function of information is also important. Making children aware of the consequences of certain choices can avoid much disappointment, uncertainty and suffering.

Information for children should be easy to understand and reliable. There must be adequate facilities to ensure that children can access available information.

Finding your way in a complex western society such as the Netherlands requires considerable social knowledge and skills. There is a real risk of a new divide appearing in society: between those who know the way and those who do not.

Trend

Dutch government policy in the field of information supply for children is a patchwork: there are various types of measures that vary per medium. The emphasis is on protection against the damaging effects of information, for instance via legal sanctions, limited distribution, transmission of certain tv-programmes at a later time of the night, introduction of age limits and coding information materials. But the supervision of compliance with these protective rules is limited.

The quality and continuity of supply of information made available to children is, at this time, not sufficiently guaranteed. Increasingly, and at increasingly younger ages, children must pay to use libraries. Recent borrowing rules create a cumulative effect. This is an additional barrier to participation in Dutch life by more disadvantaged social-economic groups.

Update January 1999

The youth information leaflet '16 something', which was used for many years to inform youngsters about issues such as rights, leisure activities, school, work, sex, holidays, etc., will only be published in electronic format in 1998 (via the Internet). This considerably reduces the number of youngsters with access to this information. The reason for the disappearance of '16 something' in printed format is the government's withdrawal of its financial contribution. On 20 November 1998, the KRC, in collaboration with the Dutch library organisation, devoted attention to the international day for the rights of the child. Posters and cards were sent out. This should be followed up in the future.

Recommendation

- The KRC urges the Dutch government to guarantee children free access to information by means of a systematic, coherent and balanced information and media policy. The government should ensure that a wide range of information is made available to children (including specific target groups of children) via a range of media in order to guarantee that children receive good quality information on an on-going basis. The principles contained in the European Charter for Youth Information (see addendum 7) could be used as a guideline for this.

4 FAMILY ENVIRONMENT AND ALTERNATIVE CARE

4.1 Children and divorce²

Article 9 CRC - The child has the right to live with its parents and maintain contact with both parents in the event of a divorce, unless this is contrary to the interests of the child.

Introduction

Some 30,000 children a year are faced with their parents divorcing. They play no part in the problems that lead to their parents' divorce, but they do suffer the consequences. Children all too often become involved in a game of tug-of-war between the divorcing parents; without choosing to, they become the stake in a battle between adults, which continues after the parents are separated.

The parents have the bounden duty to ensure that the children are able to maintain contacts with both parents. An alternative solution has to be found only when these contacts are contrary to the interests of the child.

Trend

New legislation came into effect on 1 January 1998, under which the parental authority is continued under normal circumstances. This legislation is a positive step in the continuation of parents' involvement with their children following a divorce. Prevention of conflict between the parents should be found in forms of divorce mediation. The law still includes the possibility of one of the parents being able to claim the parental authority. This can be necessary in certain cases. It would be useful to evaluate the effect of the new legislation in due course.

Recommendation

■ The KRC calls on the government to actively encourage forms of divorce mediation with a view to the interests of the children involved and offer such mediation as an accessible option to parents involved in divorce proceedings.

4.2 Intercountry adoption

Article 21 CRC - In countries where adoption is recognized and/or allowed, it shall only be carried out in the best interests of the child, with all necessary safeguards for a given child and authorization by the competent authorities.

Introduction

The 500 to 600 children adopted annually in the Netherlands come mainly from Africa, Asia and Latin America. These children are generally under one year old at the time they are taken in by Dutch families. Under Dutch law, in (intercountry) adoption, the adopted child's legal relationship with its parent(s) is replaced entirely by a new relationship with the adoptive parents.

Since the introduction of Dutch legislation relating to foreign foster children, the

² Section 4.1 has been added to the NGO report in a revised version.

phenomenon of illegal adoption has been curbed considerably. The extent to which this is also true in the countries where the children come from is difficult to judge from the Netherlands. In accordance with article 21 of the Convention, the interests of the child should be 'the paramount consideration' in adoption.

Trend

The Dutch government is in the process of ratifying the Hague Convention on the protection of children and cooperation in respect of intercountry adoption.¹⁰ In addition to wanting a child, people seeking to adopt or adopting a (foreign) child generally have the best of intentions. But adoption is a very drastic event for children, since the family ties with the parents and other relatives are severed completely. Adopted children turn out to have (serious) problems more often than other children.¹¹ Adoptive children often turn out to have a great need for knowing their 'roots'. Openness about their origins and the possibility of returning to their home country somewhat reduce the chance of problems.

Update January 1999

The Netherlands ratified The Hague Convention on the protection of children and cooperation in the field of international adoption (The Hague Adoption Treaty) on 1 July 1998. Necessary changes in legislation have been introduced. The law on taking in foreign foster children (*Wet Opnemings Buitenlandse Pleegkinderen*) has been replaced with the law on taking in foreign children for adoption (*Wet opnemings Buitenlandse Kinderen ter Adoptie*). Single people in the Netherlands are now also eligible for the adoption of a child. A central authority (CA), which supervises all adoptions in Signatory countries, has been set up under the Justice Ministry. The CA is obliged to take the necessary steps to ensure that a placement goes smoothly. This involves responsible after-care and assistance. The latter is particularly important, as it is known that a high percentage of the adoptions fail. The treaty states that if a suitable family cannot be found in the country of origin, international adoption may offer a solution in the interest of the child. The likely effect is that the number of healthy adoption babies will fall. This fact will also have to become an important focal point for information, family vetting and mediation.

Recommendations

- The KRC calls on the Dutch government quickly to search for solutions that ensure that children - who would otherwise be adopted - can grow up in their own environment. In cases where this is not feasible, the KRC urges the Dutch government to exercise great restraint when it comes to intercountry adoption. It urges the Dutch government to introduce adoption legislation to ensure the continuity of family ties with the original parents and relatives.
- Supervision on responsible after-care and assistance must be well-organised.
- The information, the family vetting and the mediation must devote attention to the extra problems entailed by the adoption of children with a handicap or illness.
- The KRC calls on the government to be watchful of abuse in the countries of origin. It should monitor the smooth progress of the procedure and ensure that the documentation is in order.
- Officials with experience of failed adoptions should contribute to research and recommendations aimed at more successful international adoptions.

4.3 Residential youth care

Article 12 CRC - The child's right to express an opinion, and to have that opinion taken into account, in any matter or procedure affecting the child.

Article 9 par. 1 CRC - The child's right to live with his/her parents unless this is deemed incompatible with his/her best interests.

Article 20 CRC - The State's obligation to provide special protection for children deprived of their family environment and to ensure that appropriate alternative family care or institutional placement is available to them, taking into account the child's cultural background.

Article 25 CRC - The right of children placed by the State for reasons of care, protection or treatment to have all aspects of that placement evaluated regularly.

Introduction

The system of child and youth care has been decentralised since 1992. Provinces and large cities are responsible for planning and financing curative youth care, with the exception of a number of nationally operating facilities aimed at specific target groups. The national government is responsible for youth detention centres.

Trends

Under the direction of the provinces and large cities, a coherent youth care system is taking shape, as a result of improved cooperation between agencies involved in youth protection, mental health care for young people and special types of youth care. The specifics of a preventive local youth policy are developed under the direction of local authorities. The national government is responsible for a directional framework for preventive and curative youth care.

There have been a number of developments in the fields of prevention, non-residential, semi-residential and residential care and foster care.

Prevention

The substance of the Dutch government's youth policy places a great deal of emphasis on preventing children from having to be taken into residential youth care. This prevention is aimed at the early detection of behavioural problems in young people. This helps prevent a call at a later stage for more serious and often more expensive forms of care. The preventive policy is backed up by a wide range of non-residential youth care, particularly in the form of family-oriented programmes. Although the KRC recognizes the importance of prevention, it emphasizes that pursuing this policy should not be at the cost of providing good residential care.

Capacity problems

As a result of the increased demand and reduced capacity, there are currently insufficient places available in residential care. In the coming years, the Dutch government will create new places in intensive family treatment, foster care and intensive residential care. However it is not yet clear whether these new places will guarantee that sufficient residential care is available.

Young people from ethnic minorities

The number of young people from ethnic minorities in youth care is increasing, particularly in residential care. To keep these young people on the right track, the ethnic

community has launched a proposal to set up residential education centres for certain groups of young people from ethnic minorities. Such an experiment has been launched on a voluntary basis for Turkish young people.

On initiative of parents the Dutch government is also planning to set up training centres for ethnic minority youth aged between 12 and 21, who have committed crimes. The purpose of these centres is to teach young people order and discipline. They will also be taught a trade and learn Dutch.

Government obligation to provide residential care

The question of whether the government is required to provide residential care for a minor who has been deemed by the court to require placement out of home has resulted in case law. For instance, one institution - partly on the basis of the Convention - filed a claim to the effect that the state be ordered to place a minor as quickly as possible. The court decided in summary proceedings that the state is required, in the case of placement in the context of a child protection measure, to ensure that a place is actually available.¹²

Participation

The past few years have seen a number of developments within youth care in the field of youth participation. For instance, discussions are ongoing on the introduction of a youth care agreement, the development of youth statutes, the appointment of confidential contactpersons for clients, the institution of youth councils, the production of information materials and the introduction of legal position regulations. The Dutch government is leaving the realisation of these ideas largely to the institutions themselves. Research¹³ into the experience of young people in youth care shows that they do not feel they are sufficiently taken seriously or feel involved in the daily life of the institutions.

Update January 1999

The government is slowly but surely beginning to recognise the capacity problems. In the new coalition accord, funds have been set aside to strengthen youth care work, but this is seen primarily from the view of fighting youth crime.

In the Netherlands, some 14,000 children live in foster families. There is a shortage of foster families. The number has fallen in recent years, from 9,500 in 1990 to 8,000 in 1997.

The government conducted a campaign in 1997 to attract more foster families.

The KRC support a greater cohesion in youth care. This process could be accelerated by the current activities, aimed at a single access point for youth care, which takes care of screening, diagnosis, placement and evaluation of the case. In this context, the government is planning to draft a law on youth care which would allow for the elimination of various barriers between child protection, youth care and youth health care.

Many children in residential care are under the authority of a family supervisor. As a result of a legislative change, the role of the juvenile court judge has become very limited and the family supervisor is now faced with a much broader range of tasks, and it is questionable whether the interest of the child is sufficiently secured.

Young people from ethnic minorities who go to a boarding school in practice often lack any real connection to and assimilation into Dutch society.

Recommendations

The KRC urges the Dutch government:

- To guarantee sufficient capacity in the field of residential youth care and youth protection.
- To ensure that aid programmes in non-residential care are intensified. The main focus here should be on family oriented programmes and forms of crisis care in view of their proven success.
- To cooperate with representatives of the ethnic minority groups to achieve good alternative care for young people from minority groups, that is not just repressive but also pro-active.
- To stimulate the creation of a pedagogical climate within residential youth care, in which cooperation with young people and parents is the key factor.
- To strive actively towards realising the plans in the field of youth participation in youth care.
- To encourage a greater number of foster families or networks of families in which children could be placed.
- When setting up boarding (schools) institutions for young people from ethnic minorities, to devote attention to good ties with Dutch organisations and assimilation into Dutch society.

4.4 Child abuse

Article 19 CRC - The State's obligation to protect children from all forms of maltreatment perpetrated by parents or others responsible for their care, and to undertake preventive and treatment programmes in this regard.

Introduction

It is estimated that at least 50,000 children (1 in 70) are abused in the Netherlands each year. The Confidential Doctors' Centres on Child Abuse (*Bureaus Vertrouwensartsen inzake Kindermishandeling*) register a total of 14,000 reported cases of child abuse each year. Additional cases are reported to the Council for Child Protection and to the police. The large majority of cases involve children who have been (sexually) abused within the family. These cases often involve so-called trans-generational violence: the roles of inflictor and victim passed down through generations.

The Confidential Doctors' Centres are faced with a lack of adequate legal provisions. Their place within the system of facilities for youth protection and youth care is unclear and the centres receive more reported cases than they can handle.

Recent years saw various incidents reported of sexual abuse of children in schools, youth clubs, sport and music associations. Places that should be safe for children.

There is no law in the Netherlands prohibiting spanking children. Serious child abuse is a punishable offence under the Dutch Criminal Code.

Trend

The Dutch government is currently funding model projects in which the Confidential Doctor's Centres cooperate with the Council for Child Protection. The premises in this context are the attempt to achieve the greatest possible openness towards the parents involved and to increase of the responsibility of professional carers dealing with abuse.

In this context, the possibility of national, low-tariff telephone contact points is now being studied.

A new system for youth care is also being developed (see 4.2). In this context, a clear relationship between the new youth care bureaus and the Confidential Doctors' Centres is being sought.

The government is subsidising a number of projects in the field of parenting support, which could play a role in preventing child abuse also.

Finally, the government is stimulating the appointment of confidential contact persons in the education sector who may be effective in the secondary prevention of child abuse.

In the view of the KRC, in spite of the above mentioned efforts, the Dutch government has failed to come up with a thorough, all-round approach to child abuse. It lacks a comprehensive, coherent policy in this respect. What is more:

- there is not enough investment in the development of prevention strategies and the implementation of successful strategies;
- the public and relevant target groups are not given enough encouragement to accept their responsibility in dealing with child abuse.
- at the moment, schools, youth clubs and music and sport associations still have too few possibilities for preventing the sexual abuse of children in their care.

Update January 1999

In 1998, the State Secretaries of Public Health, Welfare and Sport and Justice issued a position paper on counselling and contact points for child abuse on the basis of a final recommendation from the Hermanns working group. The working group also commissioned a study into suspected cases of child abuse with a fatal outcome. According to this study, at least 40 children die every year as a result of child abuse.

As part of the implementation of the position paper of the State Secretaries, the existing Confidential Doctors Centres (*Bureau Vertrouwensarts*) will be transformed into advice and reporting centres for child abuse and neglect (ARCAN) in the period to the year 2001. The following issues have yet to be resolved in this process: there is as yet no legal basis for the new working method; an increase in the number of reports could result in capacity problems at the centres; the government has not accepted the preventative function of the reporting centres. The aim of an ARCAN is: to recommend action to anyone reporting (suspicions of) child abuse and/or receiving reports of child abuse and referring same for assistance and judicial action.

Assistance in cases of (suspected) child abuse is deficient in terms of expertise. Moreover, there is insufficient insight into the demand and supply of assistance facilities.¹⁴

The Childline telephone line provides a unique service for abused children, as well as for children expressing concern about friends who are being abused. It is unfortunate that the government does not provide structural financing for the free phone line for children.

Recommendations

The KRC urges the Dutch government to conduct a coherent policy aimed at combating child abuse.

- Firstly, it should place more emphasis on preventing child abuse, for instance, by studying the effect of parenting support.
- Increased attention for the reporting of child abuse results in more requests for

assistance. The care facilities must be prepared to meet an increased demand.

- There should also be information campaigns to convince the public and the relevant professional groups of the need to accept their responsibility for dealing with child abuse and to report suspicions of child abuse

- Schools and leisure facilities should be encouraged to adopt an active approach to the prevention and combatting of sexual abuse.

- To help professionals working with children to accept their responsibility to act on (suspicions of) child abuse, training courses and refresher courses should devote attention to detecting and handling child abuse. In addition, a code of practice and guidelines for action should be developed, at least for teachers and those working in youth health care.

- The unique service in the form of the free telephone line should receive structural funding.

- The Dutch government should initiate a public debate on whether or not spanking children should be made prohibited by law. Research into the effects of such a move in other countries (such as Sweden) is essential in this context.

5 BASIC HEALTH AND WELFARE

5.1 Standard of living

Article 27 CRC - The right of children to benefit from an adequate standard of living, the primary responsibility of parents to provide this, and the State's duty to ensure that this responsibility is first fulfillable and then fulfilled, where necessary through the recovery of maintenance.

Introduction

During the 1980s, people living on minimum income in the Netherlands have seen a marked reduction of this income. This was the result of the economic crisis and cuts in social security provisions. However, the economic recovery has led to, among other things, the reinstatement of the link between wages and benefits. Due to the increasing decentralisation from national government to local authorities, there has been a marked increase in the differences between various groups of people on minimum incomes. For instance, local council levies and housing costs vary considerably.

Although children are often not mentioned separately in the poverty debate, children of single-parent families in particular are very vulnerable. The 1996 UNICEF report 'Progress of Nations' notes that 39.5 percent of single-parent families are living below the poverty line (in the period 1990-1992).

Trend

The current Dutch government is now giving the poverty issue more structural attention. Most of the emphasis is on participation in the labour market in this context. But this does nothing to the conclusions of the 1996 report 'Poverty in the Netherlands' to the effect that 20,000 households in the Netherlands have insufficient money to buy food and sometimes go hungry, that 43,000 families cannot afford a hot meal every day and that 500,000 families have insufficient money for clothing. It is clear that the poverty in these families - apart from the health aspects and poor nutrition for the children - sometimes results in children being excluded from membership of (sports) clubs or other social leisure activities.

The KRC considers the continuing cuts in the budgets for children's health clinics a cause for concern. This development is a threat to facilities that are essential, especially for parents and young children in socially weaker sections of society.

Update January 1999

The division in society was one of the discussion points during the national elections in May 1998. The Netherlands is doing well economically, but not everyone is feeling the benefit equally. A cabinet in government at a time when the Netherlands is at the peak of its wealth (in terms of income per capita) should at the same acknowledge in a memorandum that there is poverty in the Netherlands. But the new cabinet's coalition accord (July 1998) contains barely any specific measures aimed at improving the position of poor families with children. The only proposal is an increase in the reimbursement of study costs (total budget NLG 250 million). Otherwise, cabinet policy seems entirely focused on participation in the labour market. There is no provision for a far-reaching improvement of benefits or family allowance. So the question very much remains as to whether the children at the lower end of society will benefit (sufficiently) from the economic development.

Recommendations

The KRC urges the Dutch government:

- To guarantee financial support for the minimum living conditions of families with children, in any technical sense whatsoever.
- To continue research into the causes of and solutions for the poverty problem, devoting particular attention to health and welfare aspects of children.
- To ensure that the enormous differences between people living on minimum income in various regions are limited.

5.2 Basic health care³

Article 24 CRC: The rights of children to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.

Introduction

Effective health care is by no means open to every child in the Netherlands. There is a growing division in care, depending on people's socioeconomic position. There are already health care waiting lists, which also affect children. Despite the Dutch government's aim to reduce this division, a wide range of government measures have a negative impact on the socio-economically weaker groups. Children will always suffer more because of their dependence on parents/carers.

Trend

Research shows that poverty and lack of money is a direct health risk for 6% of children in junior education. Lack of money is often a risk factor in single-parent families; this is true for 30% of the children in such families. Child mortality is two to three times as high among children from ethnic minorities than among Dutch children. Seven percent of children in the Netherlands have serious psychiatric problems, while only 2% are receiving treatment.

Basic health care is under threat; some local councils have abolished this care for school children altogether. In addition, the provision of information on health education has proven ineffective, particularly for children from ethnic minorities and children from weaker social groups.

Recommendations

- The KRC urges the government to establish the basic package of youth health care by law, with extra attention paid to at-risk groups, such as children from ethnic minorities and children from socio-economically weaker groups. In this context, the government should eliminate the waiting lists in youth care and youth psychiatry.
- The KRC recommends that the government ensure that teachers and professionals in child care receive better training aimed at the detection of physical and mental health problems, as well as learning and behavioural problems;
- The KRC urges the government to encourage the participation of youth doctors in consultation situations on a neighbourhood level.

³ Section 5.2 has been added to the NGO report in a revised version.

6 EDUCATION, LEISURE AND CULTURAL ACTIVITIES

6.1 Legal position and participation of pupils

Article 12 CRC - The child's right to express an opinion, and to have that opinion taken into account, in any matter or procedure affecting the child.

Article 28 par. 2 CRC - Administration of school discipline is to reflect the child's human dignity.

Article 29 CRC - The State's recognition that education should be directed at developing the child's personality and talents, preparing the child for active life as an adult, fostering respect for basic human rights and developing respect for the child's own cultural and national values and those of others.

Introduction

The Dutch Education Act stipulates that parents/carers have to ensure that their child of five years or older goes to school. Children of 12 years and older who are subject to compulsory school attendance and those obliged to take part-time education can be called to account for non-attendance. The school is also made responsible, via a schoolwork plan, for so-called 'lesser' non-attendance; longer-term absenteeism has to be reported. Moreover, schools are not allowed to expel pupils until after the relevant authorities have tried to place the pupil in question at another school. Schools are therefore not without obligations in this respect.

Trend

In recent years, most Dutch children have, in a formal sense, been given a reasonable legal position in education, particularly in secondary education. The effort to achieve this has meant seeking a compromise between an approach that is too legalistic and one that is too patronising. This is broadly in line with the rights for pupils outlined by the Convention.

Pupils in primary and special education have no independent legal position within the school. Their parents or carers are expected to represent their interests.¹⁵ Since August 1993, secondary education schools have been required to establish pupils' statutes outlining the rights and obligations of pupils. These have to include rules on order, disputes, privacy protection and the monitoring of the quality of education. However, by 1996, far from all schools had pupils' statutes.

The question, however, is whether schools in practice respect pupils' rights. There is an impression, for instance, that the pupils on the participation council and the pupils' statutes are not always taken seriously. There are also large numbers of children dropping out of school. Frequently newspapers feature articles on pupils who fall victim to abuse and sexual abuse from teachers. Nor is there any adequate policy on bullying and racism.

Recommendations

■ The KRC calls on the Dutch government to encourage schools - via the education inspectorate - to take pupils' rights seriously and to treat them with respect (see also 1.2).

■ The Dutch government should actively support moves to promote (existing) codes of conduct in primary schools aimed at racism in the school, bullying or regarding suspicions of (sexual) child abuse.

6.2 Back to school together

Article 29 CRC - The State's recognition that education should be directed at developing the child's personality and talents, preparing the child for active life as an adult, fostering respect for basic human rights and developing respect for the child's own cultural and national values and those of others.

Introduction

The Netherlands has 15 types of secondary education for children with special educational needs. Until the 1970s, this was considered an achievement. These days it is believed that this degree of differentiation and the size of the special education sector in the Netherlands (more than 100,000 pupils attend special schools!) are more a sign that mainstream primary and secondary schools are inadequately equipped to deal with differences between pupils. The large number of pupils in special education shows that there is a systematic rejection of pupils who are unable to achieve the average level of the school.

Trend

The Dutch government considers that children have the right to receive education in which their individual capacities and limitations are taken into account as much as possible ('adaptive education'). For the last few years now, there has been an innovative programme entitled 'Back to school together' ('*Weer Samen naar School*') in the largest segment of the special education sector and mainstream primary education. The government encourages schools and their boards to work together to produce new teaching methods and working contracts to allow a greater number of pupils than before to stay in mainstream education with the help of extra support. There is reasonably wide-spread support for this objective, including among the parents of the pupils concerned. At the same time, the results have so far not been particularly promising.

Update January 1999

A new law on primary education is to be drawn up and will include a more effective definition of the relationship between normal primary education and special primary education. The July 1998 coalition accord states that the final objective in terms of class-size (ratio of education providers to pupils) is 1 to 20. This will provide more attention per child. This also benefits children with special problems, who will no longer be attending special schools, but will attend regular schools. There are also reports of parents taking their children out of school and sending them to another school, because - as they themselves say - the presence of a child with a problem or handicap means their child is receiving insufficient attention from the teacher.

Children in special education often travel a long road before finding their place. The lost ground compared to children from 'normal education', including the knowledge gap, will only increase. These children are in danger of becoming 'outsiders', thus increasing the demand for care. This care is then insufficiently available. Teachers are ill-equipped to provide the specific care and attention these children need and are unable to respond sufficiently to signals from these children.

Recommendations

- The KRC supports the new policy of the Dutch government aimed at limiting the rejection of pupils from mainstream education. It urges the Dutch government to support this policy in practical terms with funding.
- The KRC calls on the Dutch government to put forward a plan to show how it will implement policy plans.
- The KRC calls on the Dutch government to increase the education budget considerably in general terms. Despite its attempts to position itself as a 'knowledge-intensive' nation, the Netherlands is by no means a frontrunner when it comes to investment in education. Financial support for drastic changes is required if these policy plans are to be realised.
- The KRC urges the Dutch government to ensure sufficient means to make the programme 'Back to School together' work (such as more time for school guidance services)

6.3 Leisure⁴

Article 31 - The right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

Introduction

The great strength of leisure-based youth work is the fact that it is based on children's and young people's social environment. Among other things, this means that this kind of youth work reaches the children and young people in places they consider their territory, their home. Playground, youth centre, club facilities are part of children's or youngsters' everyday world. They are often involved in the design and decoration and have (partly) determined the house rules. But the neighbourhood facilities in terms of sport, play and cultural activities depend a great deal on the youth policy of the local councils. And space for leisure activities is also facing strong competition from roads, industry and housing construction projects. The Netherlands has a chronic lack of play space for children. The following is a brief comparison. There are 5 million cars in the Netherlands, each requiring 10 m² of space even while parked. There are 3.3 million children in the Netherlands who have an average of 4 m² room for manoeuvre. A ratio of 4:1. This ratio is even worse in some neighbourhoods in the Netherlands. Yet children's outdoor play and exercise is enormously important to their development. The quality of local leisure-based youth work depends very much on the knowledge, experience, motivation and financial possibilities of the volunteers involved.

Trend

There is a trend among municipal authorities and field workers to involve children in the design of their play areas. These play areas cover a larger space than the official playgrounds. It also includes the children's or youngsters' own street, plus the play areas in the neighbourhood. Increasing attention is being paid to the importance of adventurous but safe play areas for children outside the playgrounds.

⁴ Section 6.3 has been added to the NGO report in a revised version.

However, when young people are discussed (from age 12), it is often in terms of nuisance and problems; they're hanging around causing trouble. Unfortunately, it is often forgotten that these youngsters also have a right to public space. In the design of this public space, we see an enormous lack of facilities where young people can spend their leisure time. Child and youth work has been largely dismantled in recent years. There is a severe lack of facilities for young people available in neighbourhoods.

Recommendations

- The KRC advocates creating new leisure facilities, geared to the needs of young people (both of national and foreign descent), as well as effectively involving young people in the design and details. The KRC is also calling on the government to play a strongly stimulating role vis-a-vis the local councils.
- The KRC advocates developing a strong quality programme on a national level, incorporating quality criteria for leisure-based youth work, including certification, in order to realise a responsible, innovative and efficient supply of youth facilities.
- The KRC believes that every local authority should develop a youth policy with a broad supply of youth leisure facilities. Every local authority should also clearly present this local supply to the youngsters and their parents.
- The KRC urges the government to establish safe play areas for children in every municipality.
- The KRC recommends that the government ensure that every local council spends a minimum annual amount per child on play areas and safe play apparatus.

7 SPECIAL PROTECTION MEASURES

7.1 Refugee children

Article 22 CRC - Special protection to be granted to children who are refugees or seeking refugee status, and the State's obligation to cooperate with competent organizations providing such protection and assistance.

Article 10 CRC - The right of children and their parents to leave any country and to enter their own in order to be reunited or to maintain the child-parent relationship.

Introduction

After a steady rise in the total number of asylum requests in the Netherlands (in 1994: 52,000), the number of requests has fallen in the past few years (25,000 per year). Of all asylum seekers arriving in the Netherlands in 1994 and 1995, more than one-third was between 0 and 18 years of age, while in the first half of 1996, no less than half were minors¹⁶. In most cases, this involved families with children, but minors are also often forced to flee and ask for asylum alone - or with brothers and sisters. This latter group is obviously especially vulnerable. Besides the problems they encounter as asylum seekers, they also have to do without parental support at an age when they are not yet ready to do so. At the moment, the Netherlands has some 4000 of these so-called unaccompanied asylum seeking minors.

Trends

The Dutch policy on refugee children is becoming increasingly stringent. Among the arguments the Dutch government uses in this respect are the alleged abuse of existing regulations, not encouraging additional asylum requests due to a policy that is too inviting, together with the general restraint in the admittance of asylum seekers in the European Union. There are an increasing number of cases of the government also threatening (unaccompanied) minors with deportation. The same trend can be noted in the care for minors: quality care is not the first priority; the emphasis is on logistical and supervisory considerations.

The Dutch asylum policy is also characterised by a wide range of general (executive) problems that often have far-reaching consequences for refugee children:

- The government has for years now faced a large backlog, creating long waiting times for (young) asylum seekers with the resultant long period of uncertainty. The government is currently trying to catch up on these backlogs.
- The National Ombudsman, in an extensive report at the end of 1996, indicated that the quality of the secondary hearing¹⁷ and of the contact officials is well below par.¹⁸
- The division of responsibility between national government and local authorities is unclear.¹⁹
- The registration of refugee children by the Dutch government and by local authorities is by no means always adequate. This makes it difficult to conduct a specific policy.

The KRC also notes a number of specific points of conflict between the current policy and the Convention.

Discontinuity in care

There is very little continuity in the care of refugee children. Minors are regularly transferred between various centres and local authorities during the first two years after their arrival in the Netherlands. Time and again, they are forced to leave their friends, school and counsellors and get used to new people and customs. This can be considered as a violation of article 22 par. 1, article 20 par. 3 and article 27 par. 1 of the Convention.

Age-tests

If there is any doubt about unaccompanied asylum seeking children being minors, they can be asked to undergo X-ray tests to determine their age. There are ethical, medical and legal objections to these age-tests. There are no measurable criteria used to establish whether age-tests are necessary. This creates a situation of arbitrariness. What is more, the experts conducting the age-tests differ enormously in their opinion of what conclusions can be drawn from them. This can be considered as a violation of article 16, article 22 and article 37a of the Convention.

Secondary hearing

In its present form, the secondary hearing offers children too little opportunity to present their stories properly. The officials conducting the hearing are insufficiently trained in communication with children. They do not take into account the age and levels of development and education of a minor (general questionnaires, coercive questions, etc.). This can be considered as a violation of article 12 of the Convention.

Adequate care

Unaccompanied asylum seeking minors can be deported to their country of origin if there is adequate care available for them there. Children generally benefit most from growing up with their parents or relatives in their own country. This is also in accordance with the Convention. The recent trend has been for the Dutch government to send minors back to their home countries more quickly. Not just to parents or relatives, but also to institutions. The same applies even if it is not certain whether adequate care is available. In considering the deportation of a child, insufficient attention is being devoted to issues such as the period they have spent in the Netherlands, the extent to which they have adapted to Dutch society and the circumstances and possible dangers in their country of origin. This can be considered as a violation of article 6 par. 2, article 12, article 20 and article 22 par. 2 of the Convention.

Distinction

In the care of refugee children, a distinction is currently being made between (unaccompanied) asylum seeking minors and Dutch minors who are facing difficult circumstances and thus need help and/or protection. For instance, the assistance provided in facilities for underage asylum seekers is considerably less intensive (about 50%) than that for Dutch children in similar facilities. The Law on Youth Care does not apply to the care for unaccompanied asylum seeking minors. This is in contravention of article 2 of the Convention.

Information supply

Research²⁰ has shown that refugee children have insufficient information on issues such

as their legal position and the course of the admission and care procedure. This unnecessarily increases the already existing uncertainty. This can be considered as a violation of article 12 and article 17 of the Convention.

Update January 1999

The policy with respect to unaccompanied underage asylum seekers (AMAs) in the Netherlands is changing all the time. The latest development (January 1999) is that many (primarily) 16 and 17 year-olds are not sent to specific facilities but are being placed in asylum seekers centres, where they reside together with adults. The KRC considers this development cause for concern.

Numbers

In 1997, 2,845 unaccompanied underage asylum seekers applied for asylum in the Netherlands. In 1998, there were some 5,000 unaccompanied underage asylum seekers in the Netherlands (influx January-March: 250 per month, April-June: 300-350, August: 400, September: 518, October: 511, November: 400).

Capacity problems

The influx of asylum seekers has resulted in capacity problems in facilities. Families with children were recently even housed in camps of tents, which lack sufficient sanitary facilities and the like. As the government has created insufficient housing facilities, people stay in the initial facilities for longer periods of time. The move by unaccompanied minors to small housing units and small group facilities is not working effectively. This is why they are sometimes placed in asylum seekers centres. There has been a change recently in the continuity of the care. The efforts of NGOs in particular means that unaccompanied minors are no longer sent from one place to the next.

Age-tests

No age-tests were conducted in 1997 and 1998. Plans to reintroduce the age-tests have resurfaced, as there is a suspicion that the age criterion is being regularly abused upon entry to the country.

Secondary hearing

The IND now has a separate department with staff specifically trained to interview children and young people. Information for young people on their legal position has also increased.

Extradition

To date, we have only seen occasional unaccompanied underage asylum seekers (AMAs) being extradited to their country of origin. The Justice department is seeking to further tighten extradition policy. The KRC fears that underage children may become the victim of such a move.

Many receive a negative decision and no AMA-VTV (temporary residence permit). So an increasing number of young people reside in the Netherlands without official status, and they do not receive secondary education. Their integration and functioning in Dutch society is becoming increasingly difficult. The Justice department says those who are able to come to the Netherlands alone are strong enough to keep their heads above

water. This puts them in a very grey area. The uncertainty about their status and education and housing options often causes psychological problems.

MOB (destination unknown)

Unaccompanied minors have disappeared with their destination unknown. It is not certain how many there are and where these young people disappear to. There are suspicions that some of them may end up in prostitution.

Agreements with the authorities about central registration of unaccompanied minors who disappear have (not yet) been implemented. The KRC would like to know what the government is planning to do in this context.

Crisis care

There is a need to offer differentiation in the care for young people who have different problems. There is a lack of effective crisis care for young people with psycho-related problems. General Dutch crisis care is not readily accessible to this group.

Education

There are problems in the provision of secondary care and education for unaccompanied minors. There are waiting lists and the transfer system when they move from refugee facilities to small housing units is ineffective. Young people often have to wait for months to be placed. Unaccompanied minors have on occasion had to wait for months before being placed in a subsequent school. Education is often a key foothold for young refugees.

Housing

The transfer of unaccompanied minors from small housing units to independent housing once they reach the age of 18 is ineffective.

AC procedure for 16 and 17-year-old AMAs

AMAs who state their age as 16 or 17 can end up in the so-called AC procedure if the authorities doubt the nationality, age and/or flight report given during the intake meeting. The asylum application will then be decided on within 24 hours. If the AMA entered the country through Amsterdam Schiphol airport, a detention measure will be imposed in the event of a negative decision (the application is apparently declared unfounded or inadmissible) and the AMA is detained in the border detention centre (*Grenshospitum*).

Because of the Convention on the Rights of the Child, the Netherlands is obliged to take suitable action to protect every child that seeks to obtain refugee status (Art. 22 paragraph 1). A child temporarily or permanently separated from his or her parents also has the right to special protection and assistance from the state (Art. 20 paragraph 1). All measures regarding children have to be taken in the interest of the child (Art. 3 paragraph 1). The detention of a child is used only as a last resort (Art. 37b). The application of the 24-hour procedure and the imposition of a detention measure is a violation of the above-mentioned provisions of the Convention on the Rights of the Child.

Schengen/Dublin treaty; act on safe third countries

Refugees cannot always leave their country of origin with their families. If they flee to

the Netherlands via different countries, they are forced to go through the asylum procedure in different countries on the basis of national and international legislation. Family reunification is not possible during the procedure. Families can be separated for years this way. This practice is a violation of articles 3, 5, 9 and 22 of the Convention on the Rights of the Child.

Coalition accord

Although plans were presented in the coalition accord (July 1998) for a further tightening of the refugee policy, there is no mention of underage asylum seekers. This leads to the conclusion that the problems with respect to underage asylum seekers pointed out by KRC will for the time being not be dealt with by the new government.

Recommendations

The KRC calls on the Dutch government to adjust the admission and care policy to eliminate the contravention of the Convention. The KRC calls on the government:

- To safeguard the continuity in the care for refugee children. Young people should not be the victim of capacity problems.
- To take a critical look at the age-tests and to look seriously for alternatives.
- To consider the deportation of unaccompanied minors only if it is absolutely clear and certain that the adequate care for the minor in question has been safeguarded effectively.
- To place the counselling, care and assistance for underage asylum seekers/refugees under the Law on Youth Care, giving these young people the same opportunities as Dutch minors at risk.
- To gain more insight into the disappearance of unaccompanied minors from the custody facilities, the centres or the small housing units.
- To guarantee education for this group of young people without waiting lists.
- To provide effective assistance in the relocation of 18-year olds from the small housing units to their independent housing.
- To no longer treat underage asylum seekers as adults by handling their asylum application via the 24-hour procedure. In addition, the detention of these minors in the border detention centre while awaiting the next step in the procedure should be prevented.
- To ensure that families who enter the Netherlands through various European countries can go through the asylum application procedure in a single country. The government should ensure that these families are not separated as a result of the Schengen/Dublin European asylum treaties.

7.2 Children in conflict with the law

Article 37 CRC - The prohibition of torture, cruel treatment or punishment, capital punishment, life imprisonment, and unlawful arrest or deprivation of liberty. The principles of appropriate treatment, separation from detained adults, contact with family and access to legal and other assistance.

Article 40 CRC - The right of children alleged or recognized as having committed an offence to respect for their human rights and, in particular, to benefit from all aspects of the due process of law, including legal or other assistance in preparing and presenting their defence. The principle that recourse to judicial proceedings and institutional placements should be avoided wherever possible and appropriate.

Introduction

The increase in seriousness of crimes committed by increasingly younger children has led to a social and judicial reaction in the form of toughened and tightened juvenile criminal law.

A new juvenile criminal law came into effect on 1 September 1995. This was meant to modernise and simplify juvenile criminal law and to be a move in the emancipation of young people. It was also supposed to provide a more adequate answer to the increase and seriousness of the crimes committed. After all, the Dutch government claimed that overall juvenile delinquency had increased by 32% between 1980 and 1992 (in 1995, youth crimes reportedly stood at 41.380), that the nature of the crimes had become more violent (more violent crimes: 3,500 in 1990; 6,500 in 1995), and that the proportion of girls and of Moroccan youths in juvenile delinquency had increased. It also claimed that young people were committing increasingly serious offences at an increasingly early age.²¹ Expert organisations – such as the Scientific Research and Documentation Centre of the Ministry of Justice (WODC) – put these developments and their consequences into perspective.

The new legislation has provided a legal basis for alternative punishments for juvenile delinquents. The maximum detention sentence (called youth detention) has doubled in structural terms by the new law.

Since 1996, there have been intensive programmes seeking the involvement of the larger local authorities in the prevention of juvenile delinquency.

Trends

Dissolution of juvenile and vice police in the Netherlands

As a result of the reorganisation and regionalisation of the police force in 1993, the special departments of the juvenile and vice police have been dissolved or reduced in most police regions. This has resulted in the loss of a considerable amount of expertise in this field.²²

Application of adult criminal law to young people

The government has extended the possibility of punishing 16-18 year-olds, both materially and formally, in accordance with adult criminal law - because of the seriousness of the crime or the circumstances of the perpetrator.²³ This possibility is expected to be used more often in future.^{24 25}

As a result of this extension, young people can be detained together with adults and are eligible for life-sentences. The Dutch government refuses to exclude this possibility and therefore made a reservation to article 37 of the Convention (see 8.3).

More severe sentences for more emancipated minors

The increasing emancipation of young people appears to be used by the Dutch government as the basis for imposing stricter sentences.²⁶ The new range of sentences is in contravention of article 37b of the Convention, since there is no evidence that this is 'for the shortest appropriate period of time'. It also fails to take into consideration 'both the offenders and the offence' (article 5, Beijing Rules). Nor does the tightening of the sentences necessarily follow from the available figures on juvenile crime. Finally, research among juveniles serving a (non-)suspended detention sentence has shown that 95% of those with a non-suspended sentence and 85% of those with a suspended sentence returned to crime within ten years of their conviction.²⁷

A process 'without delay'

Juvenile crime cases are taking too long. The process time (the period from the date of the offence to the final ruling of the judge) amounted to 394 days in the first quarter of 1993.²⁸

Any form of delay in the criminal process is prohibited by the Convention (article 40 par. 2b iii). A delay contributes to an uncertain situation for the young person and makes it more difficult to exert any influence on the behaviour of the young person and their reintegration into society.

Young people too long in prison cells

The increase in the capacity of juvenile detention centres from 691 places in 1989 to 1,045 places in 1995²⁹ (and future plans to expand to 1,600 places) indicates a trend towards repressive action rather than detention being used as a last resort.³⁰

The Dutch draft Principle Act on Juvenile Detention Centres is an improvement when it comes to establishing the legal position of juvenile detainees in law.

However, the draft law does seem on some points to be in contravention of the Havana Rules.³¹ There are still too few signs that the Dutch detention policy is aimed at the reintegration of young people. The Dutch government is placing increasing emphasis on preventive care combined with repressive action and therefore on the increase in juvenile delinquency. The planned expansion of cell capacity is in line with this development. There is still too little attention devoted to young people in detention (long periods of time in their cells, education and work). The greatest number of complaints from young people about the treatment in juvenile institutions pertain to excessive periods of time spent in the cells: 26% of the 357 complaints in 1995. In 1992, 18 cases appeared before the appeal court for complaint authorities, the Council for Advice on Judicial Child Protection. In all cases, the Council found in favour of the complainants.

Attracting effect of alternative sanctions

The Netherlands is a forerunner when it comes to developing alternative sanctions. These have been laid down in law since the new 1995 youth penal law entered into force. There is, however, the danger that these alternative sanctions will have an attracting effect, now that it has become clear that the majority replace suspended sentences.

The Halt provision³² (direct referral by the police, for a limited number of offences, to a bureau for alternative sanctions, without intervention from the public prosecutor and juvenile court) also has an attracting effect. According to the booking policy of the Attorneys General, referral to Halt takes place after one official warning of the police. This puts the juvenile in judicial circuits at an earlier stage than previously.³³

Practice has provided insufficient evidence that juveniles have legal protection as early as at the police station (in accordance with the Beijing Rules). For instance, they will not be provided with an attorney if they are offered a Halt procedure.

Knowledge of UN Rules

In drawing up the new juvenile criminal law, the Dutch government has referred to the provisions of the Convention and to the Beijing Rules, but not to the Havana Rules and the Riyadh Guidelines. There is therefore no trace of these in the Dutch juvenile justice system. It also appears that neither academics, nor law enforcement officials are aware of the contents and the implications of these rules.³⁴

Minimum age of criminal responsibility

The Dutch juvenile justice system sets the age of 12 as the minimum age of criminal responsibility. It is becoming increasingly clear that minors under the age of 12 are also committing offenses. Some of these, shoplifting for instance, can be characterised as adolescent criminality. This phenomenon has been known for years but is now affecting ever younger children. At the moment, there is no adequate social answer available that does justice to an educational approach with a criminal law dimension. An additional problem is that children under the age of 12 are being used to commit offenses for which they cannot be prosecuted under criminal law because of their age, drug-running for instance.

Despite the prohibition on prosecuting children below this age, younger children who commit an offence may be arrested, their clothes and person may be searched and they may be interrogated for 6 hours (para. 25, 343 government report). In this context, certain Dutch developments are worth mentioning, such as the 'client-volgsysteem' (juvenile justice registration system), in which information on very young criminals from police, youth care organisations, the Child Protection Board and the public prosecution office is exchanged and linked in order to allow for early and adequate intervention. The tendency to offer these young children an alternative sanction (Halt) instead of referring them to the child protection department is cause for concern. Although in many cases a Halt offer acts as a deterrent (and is therefore preventative) and may prevent an early criminal career, there is a conceivable danger of youngsters being sucked into the juvenile justice system, while this should be used as the ultimate remedy.³⁵

Violations of the law by those under 12 should certainly not be denied or ignored³⁶, but it appears more effective to invest in education, assistance for parents in raising their children and investments in youth protection and care work. The spirit of the KRC and that of the preamble to article 40 paragraph 3 do indeed advocate a strict implementation of this minimum limit and presume a non-criminal approach to this category of youngsters.

Recommendations

- The KRC calls on the Dutch government, also as a result of recent Dutch vice scandals and article 40 par. 3 of the Convention and article 12 of the Beijing Rules, to quickly reinstate and reinforce the youth and vice police sections.
- The KRC calls on the Dutch government to withdraw its reservation to the Convention relating to the applicability of adult criminal law.
- The KRC calls on the Dutch government to bring its range of sanctions in line with international regulations and directives.
- The KRC calls on the Dutch government to take art. 40 par. 2b iii of the Convention seriously and thus adjust the Dutch juvenile justice system in such a way that procedures can be completed as quickly as possible.
- The KRC calls on the Dutch government to bring the current policy and the draft Principle Law Juvenile Detention Centres into line with the Havana Rules. In particular, where minors are detained, this should be more often in open institutions. The specific problems of girls, young people from ethnic minorities and those with psychological problems must be translated into policy and every young person must be

prepared, by means of education, work and social skills training, for a rapid reintegration into society. Moreover, there must be more specific guarantees that young people will be treated fairly during police interviews and that they will not be subject to coercion.

- The KRC calls on the Dutch government to extend the legal possibilities of Halt provision and other alternative sanctions, while protecting the legal position of juveniles in accordance with article 11 of the Beijing Rules.

- The KRC calls on the Dutch government to invest in the care and assistance for parents and their children who are guilty of criminal behaviour below the age of criminal responsibility. The government should develop legal criteria determining when Halt may be used for those under 12 and formulate criteria to determine which information can be entered in the juvenile justice registration system for what use, as soon as very young criminals are involved.

- The KRC calls on the Dutch government to adjust its legislation and policy, as soon as possible, to the content and purport of the three UN Rules (Beijing, Havana, Riyadh) and to translate the UN Rules into Dutch.

7.3 Commercial sexual exploitation

Article 34 CRC - The child's right to protection from sexual exploitation and abuse, including prostitution and involvement in pornography.

Introduction

In 1996 the Stockholm conference on commercial sexual exploitation of children (August 1996), combined with the Dutroux-case in Belgium, has given the debate on sexual abuse new impetus in the Netherlands. 1996 also saw reports of two serious cases of Dutch men going to the Philippines for child sex tourism. Both men have since been sentenced in the Netherlands.³⁷

Trend

There are indications in society that child prostitution still exists in the Netherlands. Other forms of commercial sexual exploitation - such as the production of child pornography - seem to have increased in recent years. Since 1991, the Netherlands has had legislation in force that requires an official complaint for some sexual offences. The practical effect of the complaint requirement is being studied at this moment.³⁸ In practice, it appears to be an extra threshold in uncovering sexual abuse.

The Minister of Justice outlined her plans to fight commercial sexual exploitation in a policy note of 29 October 1996. These plans are very cautious.

There are at least two important elements in the fight against commercial sexual exploitation. On the one hand, society has the moral responsibility to protect children from sexual exploitation. On the other hand, reform of law should not go as far as to diminish the right for children to their own sexuality - and room to experiment - as part of their right to self-determination and right to the integrity of the body.

Update January 1999

National Plan of Action

The first World Congress against Commercial Sexual Exploitation of Children was held

in Stockholm in August 1996. The 122 officially represented nations issued a unanimous declaration and established an international plan of action, in which each country undertakes to draw up its own plan of action outlining the measures that should be taken to end the commercial sexual exploitation of children. The Netherlands has so far failed to draw up its national plan of action.

Child-sex tourism

Three criminal cases against Dutch nationals who abused young children abroad went to the courts of appeal. The decisions have so far all been upheld in appeal. In one of these cases, the Supreme Court sentenced the offender to five years imprisonment. In July 1997, a new case was presented before the court which also resulted in a conviction. In order to simplify prosecution, the government on 1 July 1997 submitted a draft law to parliament to amend legislation pertaining to sexual abuse in such a way as to eliminate the complaint requirement (necessary for the prosecution of sexual abuse of children between 12 and 16 years of age) in the case of child prostitution.³⁹ In view of the Netherlands' extra-territorial legislation, this is also a contribution to the fight against international child-sex tourism. The KRC welcomes this development.

Child pornography

As is apparent from a judgement from the Supreme Court of 21 April 1998, the new act on child pornography, which came into effect in February 1996, is now being interpreted in such a way that, in addition to the production and distribution of child-pornography materials, the mere possession of such materials is also covered by the scope of this article of criminal law.⁴⁰

Child pornography and the internet

In the Netherlands, the Justice Minister on 20 June 1996 officially opened the Internet Contact point Child pornography (hotline), initiated by internet providers. People can report child pornography to this contact point, after which the perpetrators and distributors can be tackled.

Despite this, the judicial authorities take very little action against child pornography on the internet. The police have insufficient funds and expertise to fight computer crime. At the moment, it can do very little with the reports.

Child prostitution

It is difficult to give precise figures about the extent of child prostitution in the Netherlands, among other things because the registration is insufficient. The fact that it is a serious problem has been shown in various studies. The media have reported on child prostitution frequently of late. A recent study by the NISSO (1998) "Nature and extent of (forced) prostitution among underage (ethnic minority) girls" (*Aard en omvang van (gedwongen) prostitutie onder minderjarige (allochtone) meisjes*), refers to at least 1,000-1,500 underage girls who work or have worked in prostitution. Only a small percentage willingly choose the work. A large number are forced to work in prostitution. Girls from ethnic minorities and recently young female immigrants form a large proportion of this group. In this context, Moroccan girls are cited as being forced into prostitution by their partners (so-called loverboys). In addition, many Nigerian and Chinese AMAs (unaccompanied underage asylum seekers) end up in prostitution. Sometimes this involves traffic in women. If the girls find their way to care and assistance at all, the

next step is strikingly often forced care in closed institutions. However, institutionalisation can be a factor which forces them into prostitution or criminal circles. The KRC believes other alternatives should be found.

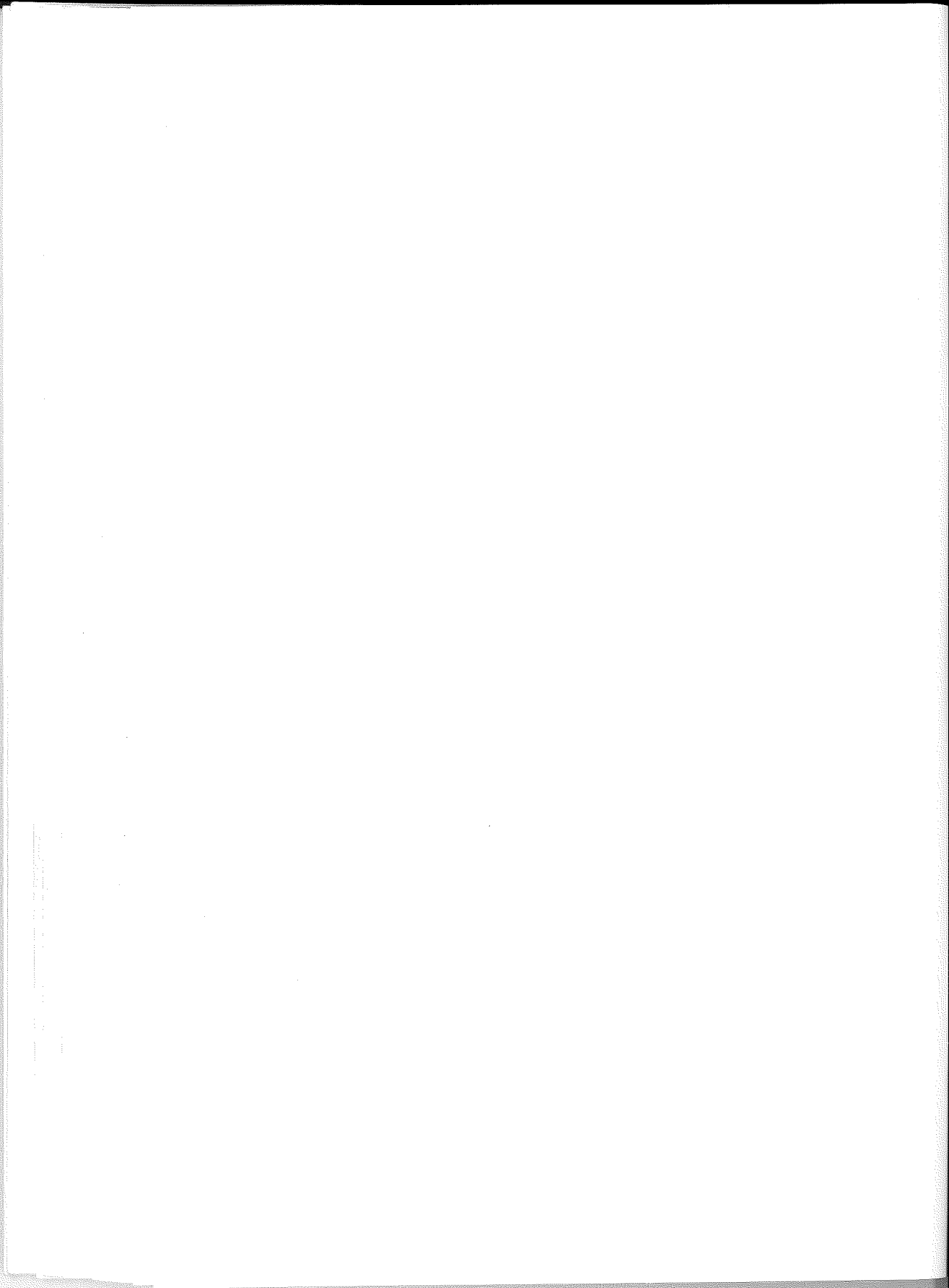
Boys are also forced into prostitution. More information is required on this group to develop an approach and prevention.

Since new draft legislation charges the municipal authorities with the task of regulating prostitution, there should also be close supervision on keeping underage people out of this sector.

Recommendations

The KRC urges the Dutch government to adopt a more active policy, in particular:

- To launch a national plan of action in accordance with the declaration of the World Congress against Commercial Sexual Exploitation of Children, held in Stockholm in 1996.
- To reinforce juvenile and vice police.
- To establish a more effective approach to child pornography.
- To install a team of police officers with expertise in the field of internet and investigation policy to deal specifically with child pornography on the internet.
- To tighten punishability of those using child prostitution (particularly with a view to international child-sex tourism).
- To get a clear picture of child prostitution and to organise out-reaching care for children working in child prostitution. Alternatives should be found to forced institutionalisation.
- To provide better information to children to increase their defences (see also 3.3).
- Real fears of sexual abuse should be taken seriously in asylum procedures. Victims of sexual exploitation should not become the victim of Dutch immigration policy.



8 RESERVATIONS AND INTERPRETATIONS

8.1 Children in armed conflicts

Article 38 CRC - The obligation of States to respect and ensure respect for humanitarian law as it applies to children. The principle that no child under 15 takes a direct part in hostilities or be recruited into the armed forces, and that all children affected by armed conflict benefit from protection and care.

Introduction

Children below the age of 18 are involved in most armed conflicts in the world. In 1997, an estimated 250,000 children younger than 18 will either be in government armed forces or armed resistance troops. In the period 1995-1996, children played an active role in 33 conflicts.⁴¹

The Convention stipulates that children younger than 15 cannot be drafted for military service. There is a broad consensus among a variety of organisations and most State Parties of the Convention on the raising of this age limit to 18 for both voluntary and compulsory recruitment, by means of an optional protocol to the Convention.

Trend

The Dutch government supports the establishment of an optional protocol relating to the compulsory recruitment of young people. However, until October 1996, it - together with some other countries - resisted the raising of the age for voluntary military service. It believed that the minimum age should remain 16 since Dutch young people have a free choice of profession from that age onwards. In October 1996, the Dutch Foreign Affairs Minister announced that Dutch young people will only be allowed to join the military voluntarily after they have reached the age of 17. The Defense Ministry will raise the age limit for professional soldiers by one year (from 16 to 17) to simplify the negotiations on the optional protocol, which are due to start again in early 1997.⁴²

The report 'Children: The Invisible Soldiers' recommends that all governments and armed resistance groups should stop recruiting children under the age of 18. The UN study by Ms Machel⁴³ on the effects of armed conflicts on children also makes this recommendation.

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In 1997, the Netherlands maintained its position on allowing voluntary recruitment from age 17. Children of 16 are offered the opportunity to acclimatise to the armed forces via a pre-military civil route. At age 17, they can then make a final decision to join the army and continue their military training. The Dutch government hopes to use this method to solve the threatened shortage of troops.⁴⁴ This Dutch attitude is not helpful to the negotiations within the UN Working Group, which reached a complete deadlock in early 1998.

Recommendation

■ The KRC urges the Dutch government to take a strong stand for an optional protocol to the Convention laying down a minimum age of 18 for both compulsory

and voluntary service in the armed forces. Such support is particularly necessary to set a strong example for other signatory nations.

8.2 Social provisions

Article 26 CRC - The right of children to benefit from social security.

Introduction

At the time of its ratification of the Convention, the Dutch government adopted a reservation in relation to article 26 of the Convention. The reason for this, is that it did not want to grant children an independent right to social security. The Netherlands is the only European country to make a reservation in relation to this provision. The current Dutch system does not generally give children an independent right to social security payments. This complies with article 26 par. 2 of the Convention, which provides that the means and circumstances of 'the people who are responsible for maintaining the child' must be taken into account.

Trend

The KRC fails to see why the Dutch government has adopted a reservation in relation to article 26, since it is wholly unclear that complying with article 26 would have a disadvantageous impact on Dutch life. Moreover, this reservation reduces children's social security - it is parents, not children, who have social security rights. The Dutch government does recognize that children have independent claims to social security in certain circumstances, but it does not want to extend the scope of this right. Especially as far as social security payments for young people and student grants are concerned, the Dutch policy seems to be more a way to limit financial support than to strengthen the independent legal position of minors.

Recommendation

■ The KRC urges the Dutch government to withdraw its reservation to article 26 of the Convention as soon as possible.

8.3 Juvenile justice

Article 37c CRC - The separation from adults unless it is considered in the child's best interests not to do so.

Article 40 par. 2bii CRC - The right to have legal or other appropriate assistance in the preparation and presentation of his or her defence.

Article 40 par. 2bv CRC - The right to have the decision reviewed by a higher competent, independent and impartial authority.

Introduction

When ratifying the Convention, the Dutch government made a reservation to article 40 par. 2bii and 2bv and article 37c of the Convention. These reservations seem largely motivated by financial - as opposed to any principle - considerations.

Trend

By ratifying the Convention, and therefore article 40 thereof, the Netherlands supports the due process rights that must be available to every juvenile suspect. The provision of legal aid can be considered one of these fundamental due-process rights. Regardless of the character of the criminal offence, legal aid is indispensable for a fair trial in the interests of the juvenile. The same applies to so-called 'minor offences'.⁴⁵

The KRC believes that the double reservation to article 37 of the Convention is even more serious. It considers the possible detention of juveniles together with adults and the possibility of sentencing 16-18 year-olds according to adult law in contravention of the juvenile justice system set forth in the Convention. The detention of juveniles together with adults violates the essential rights of young people. What is more, the detention of young people together with adults undermines any realistic prospect of rapid reintegration into society.

Dutch criminal law provides for 16-18 year olds to be sentenced according to the adult penal code where they have committed certain serious offences and where their mental development makes this appropriate. As a result, 16-18 year olds may be sent to adult detention centres and/or, in theory, be sentenced to life imprisonment.

Recommendation

■ The KRC calls on the Dutch government - also in light of the recommendations from the World Conference on Human Rights in Vienna - to withdraw its reservations to article 37c and article 40 par. 2b of the Convention as soon as possible.

SUMMARY

At first glance the Netherlands is a good country to grow up in. Most of the basic rights of children are sufficiently guaranteed because of the high living standards and adequate social facilities. The government is developing various initiatives to translate, where necessary, the provisions of the Convention into policy. The Coalition for Children's Rights (Kinderrechtencollectief, KRC) nevertheless notes a number of worrying developments with respect to child policy, in particular in relation to children and young people in high-risk groups, that require extra attention and investment from the government.

Implementation and participation

It is difficult to measure the extent to which the Dutch government is giving priority to investment in children, since no details into spending for the benefit of children are available. The KRC therefore calls on the government to provide a detailed overview of government spending for child policy in the annual state budget. This would enable the KRC to identify possible trends in the spending patterns.

The KRC also recommends that a so-called 'children's check' be introduced to review carefully the consequences of policy plans for children in each field of policy.

It is essential to the implementation and review of the Convention that organisations in Dutch society keep a critical eye on the government's activities in the field of legislation and policy-making. However, the Council for Youth Policy which, between 1980 and 1996, gave the government advice, on request and on its own initiative, was unfortunately disbanded in 1996. The task of critical and independent review of youth-related policy-making by all government departments, has not been taken up by any other organisation. This is why the KRC calls on the government to give existing organisations the tools that would allow them to take up this task or set up a new advisory body. The strengthening of children's ombudswork, by appointing an ombudsperson for instance, could also help in detecting bottlenecks in youth policy.

The Convention is based on the premise of children's participation in society. Yet, with limited exceptions, children cannot themselves go to court to ask that their rights be upheld. The KRC believes this is a serious deficiency and urges the Dutch government to establish a mechanism to allow minors to commence proceedings themselves, so that they - independently from their legal representative - bring claims that their Convention based rights have been violated before courts. In this context, the government must also ensure that legal aid is available for children. With the national campaign 'Talking brings you your right', the Dutch government has made a good start with respect to the obligation to increase public knowledge of the Convention. But unfortunately this is only a one-off campaign, aimed at a limited age-group (10-14 years). There is also a lack of initiatives to provide information on the Convention to parents, other carers and those who deal with children on a professional basis.

International responsibility

The policy of the former Development Cooperation Minister shows that the Dutch government takes its responsibility for the welfare of children in developing countries very seriously. This is shown by initiatives such as the conference 'Children in Development' (1996) and the strong support for the so-called 20/20 Initiative (to make more funds available for basic provisions). The KRC hopes that the new Development

Cooperation minister will continue the policy of her predecessor, which devoted considerable attention to children. The KRC also urges the government to accept its responsibility with respect to the problem of child soldiers. The Convention states that children below the age of 15 should not be called up for military service. Most signatory countries seem willing to raise this age to 18 by means of an optional protocol to the Convention. The Dutch government, however, has so far refused to raise the age to more than 17. The KRC calls on the government to actively support an optional protocol which lays down the minimum age of 18 for both voluntary and drafted service. This is particularly important since such an approach could serve as an example for other signatory countries.

Civil rights and liberties

In the Netherlands, between 500 and 600 children are adopted each year, primarily from Africa, Asia and Latin America. In these intercountry adoptions the family-law ties with the parent(s) are entirely replaced by the new family-law ties with the adoptive parents. This makes adoption a radical instrument for children. Adopted children have serious problems more often than other children. They often have a great need for information about their origins.

It is generally in the interests of the child that it can grow up in its own, familiar environment. The KRC therefore calls for great restraint with respect to intercountry adoption. The KRC also calls for legal provisions for adoption that ensure the preservation of family ties with the original parents and family.

There is also a need for knowledge of their own origins among children who were born with the aid of modern reproduction techniques such as Artificial Donor Insemination (ADI). The KRC believes that children have the right to know who their biological parents are. The Dutch government should make legal provisions to allow children to learn about their ancestry, regardless of the consent of the biological parent(s).

Youth care

Since 1992, a new, coherent system of youth care has been developed under the supervision of provinces and large cities, with the emphasis on preventing children from having to be taken into residential youth care. By recognising behavioral problems in young people early on, it is possible to prevent a situation in which more serious, and often more expensive, care is required at a later stage.

There are currently insufficient places in residential care due to the increased demand and reduced capacity. The KRC therefore calls on the Dutch government to guarantee sufficient facilities in the fields of youth care and protection.

In view of the increasing number of young people from ethnic minorities who are in residential care, the KRC also calls for cooperation with representatives of ethnic minorities to establish good alternative forms of care, such as residential schools. Research into the experiences of young people in residential care reveals that they do not feel they are taken seriously enough or feel involved in the daily life of the institutions. Various initiatives are being developed within the institutions (for example youth statutes, youth councils) in order to change this situation. The KRC would like to see the government make an effort to ensure that such existing plans are actually implemented.

An estimated 50,000 children are abused in the Netherlands each year. The Confidential

Doctors' Centres on Child Abuse (*Bureaus Vertrouwensartsen inzake Kindermishandeling*), that register some 14,000 reports of child abuse each year, lack a legal basis for their work. The government supports various projects aimed at prevention, earlier detection and more effective intervention in child abuse cases. These include projects for parenting support and introducing confidential contact persons at schools.

The KRC believes, however, that the Dutch government's approach to child abuse is not radical enough and that there is no coherent policy.

The KRC supports the use of more measures, such as information campaigns, to urge the public and relevant professions to accept their responsibilities in the approach to child abuse and to report cases of abuse more quickly. The KRC also calls for more research into the effects of programmes for parenting support, so child abuse can be prevented.

School, leisure and cultural activities

In recent years, most Dutch children have, in a formal sense, been given a reasonable legal position in education, particularly in secondary education. However, in practice, schools do not always treat the rights of their pupils with respect. Pupils are still regularly the subject of abuse and sexual abuse. And the large number of children leaving school prematurely is also cause for concern. There is no adequate policy on bullying and racism at primary school level. The KRC urges the government actively to support the development of codes of conduct in primary schools aimed at racism, bullying and dealing with suspected sexual and other abuse.

The KRC supports the new policy of the Dutch government (Back to School together) aimed at limiting the exclusion of pupils from mainstream education. It urges the government to ensure that sufficient funding is provided to implement this policy. Despite its attempts to position itself as a 'knowledge-intensive' nation, the Netherlands is by no means a frontrunner when it comes to investment in education. The KRC therefore calls on the Dutch government to increase the education budget considerably to ensure that all policy plans can be implemented. Greater investments should be made in safe play areas and play apparatus for children.

Special protection

One-third to half of all refugees applying for asylum in the Netherlands each year (some 25,000 at the moment) are under 18 years of age. Refugee children are very vulnerable, particularly those who flee their countries alone or with brothers and sisters. At the moment, the Netherlands has some 4,000 of these so-called unaccompanied asylum seeking minors. The Dutch policy on refugees is becoming increasingly stringent. The recent trend has been for the Dutch government to send minors back to their home countries more quickly. Not just to parents or relatives, but also to institutional homes. Moreover, the Dutch asylum policy is characterised by a wide range of executive problems that often have far-reaching consequences for child refugees. For instance, the quality of the second hearing, during which a refugee explains his asylum application, leaves much to be desired. The officials conducting the hearing are also often inadequately trained in communication with children. Long waiting times cause enormous uncertainty about the future for asylum seekers. Minors are regularly transferred during the first two years after their arrival in the Netherlands, which means that they are forced to get used to new environments time and time again. The application procedure (AC procedure) for under-age asylum seekers, whose age, flight report and/or nationali-

ty is questioned by the judiciary, results in detainment in the *Grenshospitum* border detention centre in the event of a negative decision. This is a violation of article 22 paragraph 1, article 20 paragraph 1, article 3 paragraph 1 and article 37b.

The KRC is making a number of recommendations to improve the policy regarding refugee children dramatically, including the proposal to place the assistance to underage asylum seekers and refugees under the Law on Youth Care. This would mean that these children would have the same options and chances as Dutch minors requiring special care or assistance.

Juvenile justice

The seriousness of juvenile crime has led to a social and judicial reaction in the form of toughened and tightened juvenile criminal law. For instance, the maximum permissible detention sentence for minors has doubled. The government has extended the possibility of punishing 16-18 year-olds in accordance with adult criminal law where the seriousness of the crime or the personal circumstances of the perpetrator makes this appropriate. The new range of sentences is in contravention of the provision of the Convention that young people should be detained only as a last resort and that where they are detained this should be for as short a period as possible. The KRC therefore calls on the Dutch government to bring its range of sanctions in line with applicable UN regulations and directives. It also calls on the Dutch government to withdraw its reservation to the Convention pertaining to the applicability of adult criminal law.

As a result of the reorganisation and regionalisation of the police force in 1993, the special departments of the juvenile and vice police have been dissolved or reduced in most police regions. This has resulted in the loss of a considerable amount of expertise in this field, which is regrettable both in view of a balanced juvenile justice policy and in view of the fight against sexual exploitation of children. The KRC therefore calls on the Dutch government to quickly reinstate and reinforce the youth and vice police sections.

NOTES

1. An English language brochure containing further information about the legal position of minors in the Netherlands is available from Defence for Children International Section The Netherlands, PO Box 75297, 1070 AG Amsterdam, The Netherlands. This brochure was written by Karin Kloosterboer and Stan Meuwese and was edited by Sarah Alexander.
2. Doek e.a. in *Tijdschrift voor Familie- en Jeugdrecht*, Jrg. 20, number 1, January 1998.
3. A preliminary review of existing case law shows that, as at the beginning of 1997, courts were rarely relying on the Convention.
4. The Advisory Council for Judicial Child Protection advises the Ministry of Justice - requested and unrequested - on legislation related to youngsters. This task therefore covers only part of the activities of the Council for Youth Policy. The Council for Social Development, founded in 1996, is not explicitly active in youth policy.
5. The KRC refers to the arguments in the 1995 advice to the government from the Council for Youth Policy and the Dutch Family Council: *Kind in proces: Pleidooi voor een eigen rechtsingang*. The summary of this advice is included in addendum 3. The government should take this advice into serious consideration.
6. Research shows that many local authorities are interested in the subject: Lump, G.J. and P. de Savornin Lohman (1996). *Jeugdparticipatie: activiteiten, beleid en behoeften. Intern verslag van een inventarisatie onder gemeenten*. Amsterdam: DSP.
Winter, M. de (1995). *Children as Fellow Citizens. Participation and Commitment*. Radcliff Medical Press, Oxford, New York, 1997.
7. Bill on the introduction of joint authority for parent and partner and joint custody; memorandum on lifestyles in family law; bill on registered partnership, bill on law of descent.
8. Council for Youth Policy, Emancipation Council, Dutch Family Council.
9. Dutch Family Council, *Nieuw gezinsrecht: Rapport over ouderschap en partnerschap*, The Hague 1996.
10. 29 May 1993, The Hague.
11. Adoptive children visit a RIAGG psychological service or school assistance service for their problems no more than other children; adoptive children are (temporarily) placed out of the home three times more than other children. This is shown by studies such as Verhulst, *Vaardigheden en probleemgedrag bij adoptiekinderen*, 1989/1993.
12. See Unen, A. van, *Uithuisplaatsing van minderjarigen (Placing minors in residential care)*, *Tijdschrift voor Familie- en Jeugdrecht*, Jrg. 18, number 1, January 1996.
13. De Boer, W, et al., *Children's Rights and Residential Care in International Perspective*, DCI/EFCW/FICE/-NIZW, 1996; *Verslag van het project 'Hoe (be)leven tehuisjongeren'*, Lindenhout Foundation, Nijmegen, 1996; Senten, C., *Participatierechten van kinderen in (semi)residencieuze instellingen*, *Tijdschrift voor de Rechten van het kind*, 1995; Meerdink, J., *Lieverkoekjes hebben ze niet: Meisjes in de jeugdhulpverlening: een verkennend onderzoek naar hun ervaringen en meningen*, The Hague, Province of South Holland, 1993.
14. *Evaluatie modelontwikkeling advies- en meldpunten kindermishandeling*, final report research bureau DSP, Amsterdam 1997.
15. The position of these parents/carers is outlined in the Law on Participation in Education (WMO). They can participate in the compulsory participation council (MR) of the school. The MR can also comprise pupils of 13 years and older in (secondary) special education. The pupils in general secondary education can also be

representatives. This MR not only has discussion rights, but the competent authorities within a school sometimes also require the approval of the MR. For instance, if the issue in question involves matters such as changes in the educational objectives, school work plan/curriculum, school regulations, activities plan, school hours, the role of the parents in school and issues such as safety and health. Pupils in primary education have the least say. Nor will they benefit particularly from 'adult' forms of participation within the school.

16. Keulen, A. van, *Vluchtelingenjeugd in lokaal beleid*, Projectenbureau MUTANT, Utrecht, 1997.

17. The interview held to determine whether or not and on what grounds an asylum seeker may be allowed to stay.

18. The National Ombudsman, report number 96/600, 17 December 1996, found that:

- the information supply to asylum seekers during the introduction of the secondary hearing is inadequate;
- unjustified pressure is exerted on the asylum seekers during the hearing;
- asylum seekers are given insufficient opportunity to explain the reason for their flight;
- too little time is spent on conducting the secondary hearing;
- there are insufficient checks on the performance of the interpreters.

19. In January 1997, various local authorities and the Umbrella Organisation of Dutch Local Authorities (VNO) reported that they found the asylum seekers policy 'unworkable' and 'inhuman' and that they no longer wished to cooperate in its execution (NRC newspaper 28-1-1997).

20. Including Lassen, B and K. Kloosterboer, *Het leven in Nederland is niet zacht als zijde: De sociale en juridische positie van alleenstaande minderjarige asielzoekers*, Amsterdam, DCI, 1995.

21. See report J. Junger-Tas, P. van der Laan, *Jeugdcriminaliteit 1980-1992*, WODC 1995, p. 8-13. And J. Junger-Tas, *Jeugd en gezin, preventie van een justitieel perspectief*, Ministry of Justice, 1996, p. 16. Report Van Montfrans committee, *Met de neus op de feiten, aanpak van jeugdcriminaliteit*, 1994, pp. 15/18-19.

22. See also report Van Montfrans committee, as above, p. 27.

23. Article 77b Dutch Criminal Code.

24. See report Van Montfrans, as above, p. 40.

25. See P. van der Laan, *Het nieuwe jeugdstrafrecht, op weg naar onnodige repressie?*, *Tijdschrift voor Familie- en Jeugdrecht*, vol. 11 1995, p. 224.

26. The Dutch range of youth sentences has been toughened considerably since the new law of 1995. Youths aged between 12 and 16 are now eligible for a maximum of 12 months detention; youths aged between 16 to 18 for a maximum of 24 months; the maximum financial penalty has been raised to NLG 5,000 and placement in a youth institution can also be imposed after the age of 21.

27. See P. van der Laan, *Opnieuw in de fout, Perspectief*, November 1996, p. 9.

28. See report Van Montfrans, *Met de neus op de feiten aanpak jeugdcriminaliteit*, Ministry of Justice, 1994, p. 65.

29. See Annual figures juvenile detention centres 1995, Ministry of Justice, detention centres department 1996, p. 5.

30. The number of criminal law placements has increased from 11% in 1990 to 26% in 1995, while the period spent in detention centres has increased to 68 days. The State Secretary has also pledged 170 new places for 1996. This according to the annual figures for juvenile detention centres 1995, Ministry of Justice 1996.

31. Although a directive for phased detention will be included (making it possible, after a while, for the remainder of the detention to be served outside the institution), the draft law insufficiently illustrates how 'adequate communication' with the outside world will be effected - such as trial leave, following education outside the institution, working outside the institution and assistance in job application procedures. It is insufficiently clear how this fits in with the objective of achieving the 'rehabilitation aim' (article 32, Havana Rules) and the preparation for a return to society (art. 12/59 Havana Rules).
32. Halt stands for *Het Alternatief* (the alternative), a legally regulated alternative settlement for first offenders, vandalism and petty crime, which is possible in the investigation stages and can involve the payment of financial compensation by the juvenile or by the juvenile repairing the damage caused.
33. P. van der Laan, as above, p. 246.
34. At the moment there is no translation of these UN Rules in the Dutch language.
35. According to research from 1996, the problem of an increasing number of children under 12 supposedly committing offenses is not quite so pressing and is no reason, for instance, to reduce the age limit. See M. Grapendaal, P. van der Veer, A. Essers: *Over criminaliteit en kattekwaad bij 7-11 jarigen*, WODC 1996. Also *Notitie Kinderen en Criminaliteit, verkennende studie naar de aard, omvang en aanpak van crimineel gedrag bij kinderen jonger dan 12 jaar, Jeugd en Sanctiebeleid*, February 1997, which states that it is unclear whether there has been an increase.
36. See, for instance, the report from the Van Montfrans commission *Met de neus op de feiten*, Justice Ministry 1994, *Halt en twaalf-minners: Halt-Plus?* An inventory of the situation in six Halt regions with regard to children under the age of twelve who commit offenses, commissioned by Halt Nederland, Eysink Smeets and Etman, *Advies onderzoek en informatie criminaliteitsbeheersing*, 1995.
37. See the judgment of the District Court of The Hague of 8 October 1996, upheld by the High Court of Appeal of The Hague on 26 February 1997, sentencing the defendant to five years imprisonment and the judgment of the District Court of The Hague of 18 January 1997, sentencing the defendant to two years imprisonment.
38. By the Verwey-Jonker Institute.
39. This proposal was based on as yet unpublished conclusions of the study on the complaint requirements, completed by the Verwey-Jonker Institute.
40. This is in line with the letter of 12 February 1997 from the Advisory Council for Judicial Child Protection to the Minister of Justice. In particular, the KRC backs the recommendation that commercial sexual acts with children between the ages of 12 and 16 should be made punishable, as well as the extension of the punishability of possessing child pornography.
41. 'Children: The Invisible Soldiers', written by Quaker United Nations Office and International Catholic Child Bureau in the context of the UN study into the effects of armed conflicts on children. Geneva, 1996.
42. Letter from Foreign Affairs Minister Hans van Mierlo to the speaker of the Dutch Lower House of Parliament regarding Answers to questions from MP's Verspaget and Van der Burg pertaining to the minimum age for voluntary recruitment in the Dutch military, 11 October 1996.
43. Final Report of the United Nations on the Impact of Armed Conflict on Children for the United Nations General Assembly, Gracia Machel, Geneva 1996.
44. Response to parliament from Defence State Secretary Gmelich Meijling, parliamentary minutes Lower House 1997-1998 25811 no. 1.

45. In this context, the KRC submits to the Committee for its consideration that there is a danger in the use of the vague criterion 'minor offences': that of a sliding scale, in which juveniles are denied legal aid on completely arbitrary grounds.

ADDENDUM 1 TRIAL OPTIONS FOR MINORS IN DUTCH CIVIL AND ADMINISTRATIVE LAW

Right of hearing

The judge has to give children aged 12 and over the opportunity to give their opinion in family-law procedures. These children have the right to be heard in decisions on divorce and access arrangements, in custody changes, child care and protection orders and adoption. The judge is not obliged to hear children below the age of 12 but he has that option. If an 11-year old girl asks the judge if she can be heard on the divorce of her parents, the judge will generally do so. If the judge arrives at a ruling in which the opinion of the child is disregarded, the minor has no opportunity to appeal.

Informal commencement of proceedings

Minors aged 12 and older can call or write to the judge to request the institution, change or termination of an access arrangement. Younger children, who 'are capable of making a reasonable assessment of their interests' can also do so. The child does not need to be represented by a lawyer. The judge may comply with the request but is not obliged to do so. The young person, on the other hand, has no opportunity to appeal in this case and can also take no further action if he disagrees with the court's decision.

Interested party in family-law procedures

In family-law procedures other than divorce - such as a change in custody, adoption, a family supervision order - minors may be an 'interested party' if a case is directly related to their rights. They may have themselves entered into the proceedings and thus become a party in the proceedings. They are also allocated a lawyer, who they generally would not have to pay since they are without financial means. They can appeal against the decision, but not on their own behalf: the proceedings must be brought by their legal representative, or where he/she has conflicting interests by a special guardian.

Right to commence proceedings in family supervision orders

If a family supervision order has been issued, minors from 12 years of age can ask the court to lift this child care and protection order. They can also ask the court to revoke the appointment of a family supervisor. Minors cannot independently ask the court to issue a family supervision order or appeal against a placement in care. In these cases they continue to be dependent on the parents or the Child Care and Protection Board. If placed in a closed institution, the child is allocated a lawyer.

Special guardian

The interests of the child are usually consistent with those of the parents. If the rights of children are violated, the parents - as legal representatives - are able to fight this effectively. If a child has a conflict with his legal representative, that in itself is a problem. If the conflict becomes so serious that the minor considers taking it before the court, the problem is even greater. After all, the rule is that minors cannot act independently but are represented in legal matters by their legal representatives. In situations where the interests of the child conflict with those of the parents, there is, in limited circumstances, the construction of a special guardian. Minors can ask the court to appoint a special guardian to represent them in the conflict with the parents.

Summary proceedings

The judge who hears summary proceedings (the president of the district court) has little problem in practice with allowing older minors to participate in a trial. Several minors have already instituted proceedings independently in this way. Although summary proceedings require an 'urgent interest', this is generally accepted to be the case. For instance, in the case of the girl who sought a court injunction against her father or the boy who issued a wage claim against his (former) employers.

Procedures against the state

If a minor is considered 'capable of making a reasonable assessment of his interests', he can institute proceedings against the state independently under administrative law. He then has the same options as an adult. This allows, for instance, a child facing the possibility of losing a playground to institute proceedings against his local council.

ADDENDUM 2 SUMMARY OF 'THE CHILD IN LITIGATION: THE CASE FOR MINORS HAVING THE RIGHT TO BRING LEGAL PROCEEDINGS ON THEIR OWN BEHALF'*

In 'The Child In Litigation: The Case For Minors Having The Right To Bring Legal Proceedings On Their Own Behalf', the Council For Youth Policy and the Dutch Family Council argue for a change in the law to grant minors the right to bring certain types of legal proceedings on their own behalf. Under the current law, minors must (except in a very limited number of circumstances) bring proceedings through their legal representatives, usually their parents. Both Councils take the view that minors ought to have this right, particularly where their problems concern their legal representatives. Both Councils recognise, however, that such a right should be exercisable only as a last resort, when children have no other means of resolving their difficulties.

Access to the court is a fundamental human right. Minors should not be prevented from exercising this right on the grounds that this is necessary for their own protection and development, the so-called 'protection principle'. In circumstances where a minor is not expected to come to a balanced decision himself, his legal representative acts in his interests and on his behalf. There is no real reason why a minor's only means of access to a court should not be through his legal representative as long as their interests do not conflict. However, this requirement is not justifiable where their interests do conflict. The same applies when, for whatever reason, the legal representative and the minor cannot agree on whether legal proceedings should be brought, or, if proceedings are brought, how they should be conducted. In such cases, the legal representative is not the most appropriate person to act on the minor's behalf.

In 'Children In Litigation', the Councils put forward two reasons why minors should be allowed to institute legal proceedings on their own behalf, with a legal representative acting for them. Firstly, an assessment of the development of minors' position in family and community life suggests that minors are becoming increasingly independent at an earlier age, which should lead to a less stringent application of the 'protection principle'. The extent to which the law considers minors as independent parties should at least be consistent with their position in family and community life. Secondly, as currently interpreted, the 'protection principle' does not provide a solution in cases where a minor's problems relate to his relationship with his legal representative. The frequency with which legal representatives sexually, mentally and/or physically abuse minors is so high that it cannot be claimed that the need for minors to have an independent right of access to the courts is a purely theoretical one.

The detailed proposal for introducing a right for minors to bring legal proceedings on their own behalf distinguishes between, on the one hand, different types of conflicts which might lead a minor to wish to bring legal proceedings and, on the other, the different persons with whom the minor is in conflict. The Council For Youth Policy and the Dutch Family Council argue that a minor who is twelve years old, or older, should [as a last resort/in extreme cases] have an independent right of access to a court where he is in conflict with his legal representative or where he has a conflict with someone else which relates to personal or family law, and his legal representative cannot or will not bring an action on his behalf.

The Councils believe that minors should have the right to bring legal proceedings on their own behalf only where they have satisfied the following conditions: firstly, the minor must have exhausted all other methods open to him to solve his problem. This could be via his immediate surroundings, a child care organisation or a Children's Rights Shop. Secondly, the minor must involve a lawyer in the proceedings.

In 'Children In Litigation', the Councils give some preliminary views on how a right for minors to bring legal proceedings on their own behalf could be formulated in conflicts other than those relating to personal and family law (for example, health law or child care law). They recommend that further research be conducted into the consequences for property law of expanding the right to bring legal proceedings in this way. They anticipate that the right for minors to bring legal proceedings on their own behalf could, in the future, be extended to all areas of law.

In their joint proposal, the Councils place a necessarily arbitrary age threshold of twelve years on a minor's right to bring legal proceedings on their own behalf. This is done principally for practical reasons. Allowing a judge to determine in individual cases whether a minor is capable of a reasonable assessment of his own interests would not assist the consistent application of the law or promote legal certainty. The Councils assume that a child aged twelve or older is generally able to appreciate the consequences of bringing legal proceedings. However, this age threshold is not absolute. It should also be possible for children under the age of twelve to approach the court directly when this is necessary. In such cases, the court must first consider whether the minor is capable of appreciating the legal consequences of bringing legal proceedings. If the court finds that the minor is not capable of doing so, it should be required to appoint a special guardian *at litem* to bring the proceedings on behalf of the minor.

* 'Child in Litigation: The Case For Minors Having The Right To Bring Legal Actions On Their Own Behalf' is jointly produced by the Council For Youth Policy and the Dutch Family Council. Under responsibility of both Councils, edited by Lies Punselie (staff member of the Dutch Family Council) and Karin Kloosterboer (at the time, staff member of the Council for Youth Policy, now a staff member of the Dutch section of Defence for Children International). The report is written in the Dutch language and available in bookshops (reference number ISBN 9066651687).

ADDENDUM 3 BEST INTERESTS OF THE CHILD

It is sometimes said that the 'interest of the child' is too open a criterion, i.e. open to many interpretations. In a publication dated 1989, two Dutch psychologists, Heiner and Bartels (*Tijdschrift voor Familie en Jeugdrecht* - magazine for family and youth law - March 1989, pages 59-65) present a number of key concepts, based on extensive literature research, which together may provide more concrete criteria to assess the concept 'interest of the child'. The KRC below presents its own interpretation of the proposals made by Heiner and Bartels. These criteria are inspiring and can be used by anyone (policy-maker, judge, parent, carer) who has to make decisions on the basis of the interests of the child. The twelve verification points can be summarised as follows:

- * adequate care is necessary;
- * a safe physical environment;
- * continuity and stability;
- * interest in the child's perception of its environment
- * respect;
- * taking the needs of a child seriously;
- * a sense of security with at least one adult;
- * a supportive and flexible structure with room for initiative, challenges and experimental behaviour;
- * adequate example-behaviour;
- * broad education opportunities;
- * contact with age-group;
- * knowledge of and contact with the child's own past.

ADDENDUM 4 THE AIMS OF YOUTH OMBUDSMAN WORK

The main aim of the project "Come On! Youth Ombudsman Work" is to create conditions to allow children and young people to take a stand for themselves and realise their rights. Youth Ombudsman Work should be "directed" by young people themselves; it puts the interests of children and young people first. To this end, the following secondary objectives have been drawn up. They represent the added value Youth Ombudsman Work seeks to realise vis-a-vis existing regular work (for instance, the child telephone line, legal aid advice centres for children and young people, youth information points, etc.).

1. Creating more opportunities for children and young people to be heard
2. Encouraging youth participation
3. Gaining more insight into the signals from young people
4. Improving access to youth facilities
5. Protection of interests

In conclusion, the various aims can be realised by giving concrete substance to the various possible aspects of Youth Ombudsman Work, i.e: information, contact point, consultation, mediation and supervision, detection, determining positions and protecting interests.

Several characteristics of Come On! Youth Ombudsman Work

Come On! Youth Ombudsman Work is the result of a demand-study by the Amsterdam Free University.

Come On! Youth Ombudsman Work closes the gap between the services provided by the Childline on the one hand (very well known, accessible, only by telephone) and the various facilities and schemes available to children, such as youth care, social services, etc. (less known).

Come On! Youth Ombudsman Work seeks to encourage participation. Come On takes nothing out of the young people's hands, but actually encourages them to do things themselves. Participation increases the quality and effectiveness of the services.

Come On! Youth Ombudsman Work helps children and young people to realise their rights.

Come On! Youth Ombudsman Work is a cooperative, not a new organisation.

ADDENDUM 5 EIGHT BASIC RULES FOR YOUTH COUNCILS

- I. It is very important how the adults and young people approach one another. They must respect and trust each other.
- II. The young people must be given good supervision. The supervisor must give the young people the chance to do as much as possible themselves but, at the same time, the young people must be able to learn something from it all.
- III. The support in the municipality: the adults working for the municipality must be open to the youngsters' ideas and prepared to search, with them, for ways of actually implementing these ideas.
- IV. The motivation of the young people: the young people must want to put effort into the Youth Council and be interested in the topics occupying the Youth Council. The youngsters are the engine to the council. If they are not willing, the Youth Council will not get off the ground.
- V. The young people determine the topics for the Youth Council themselves or together with the adults.
- VI. The young people determine what they will do with the topics themselves or together with the adults, for example: making a plan, organizing an activity.
- VII. The young people and the adults together decide what the council will look like, who will do what, etcetera. If, after a while, a certain method appears not to be working, then it can be changed after talking about it together.
- VIII. Facilities and provision of information: for their work in the council, the young people must be able to go to the town hall or the supervisor with questions, to photocopy things, use the phone, etcetera. The municipal authorities must ensure that the young people from the Youth Council have all the necessary information on time and in a form which they can understand.

Wij willen serieus genomen worden, Anouk Brink commissioned by Kinderrechtencollectief

ADDENDUM 6 ROTTERDAM DECLARATION ON YOUTH PARTICIPATION

The European Youth Participation Conference, held in Rotterdam, 5-8 June 1997, states:

- I. Young people have to be actively involved in decision-making;
- II. All young people have the right to participate; European countries should support young people to put this right in practice;
- III. All democratic methods of youth participation have to be taken into account;
- IV. The EU has to help young people to exchange their experiences about youth participation;
- V. Youth participation is a continuing process; it requires a flexible and supportive listening attitude from decisionmakers.

Therefore the Rotterdam European Conference on Youth Participation calls on the European Summit to encourage:

1. that policies are developed with young people, in order to construct a better future for all in a democratic society;
2. equal participation for all kinds of young people, with special attention for special groups wherever necessary;
3. a combination of different kinds of youth participation; small initiatives should not be discouraged or left out;
4. the exchange of experiences and model development throughout Europe;
5. initiatives that enlarge the understanding and acceptance for youth participation programs.

ADDENDUM 7 EUROPEAN YOUTH INFORMATION CHARTER

Adopted in Bratislava (Slovakia) on 3 December 1993 by the 4th General Assembly of the European Youth Information and Counselling Agency (ERYICA)

PREAMBLE

In a society that is more complex, youth information and counselling play a role that is more important than ever in a young person's transition to adult life. Information and counselling can help young people to achieve their vocational and individual aspirations and counselling can help young people, promote the exercise of their autonomy, facilitate their mobility and help to make Europe a part of their daily life.

Respect for democracy, human rights and fundamental freedoms implies the right of young people to dispose of complete, understandable and reliable information on all the questions and needs that they express, giving them the widest range of choices without discrimination and free of ideological or any other kind of influence.

This right to information has been recognised in the Universal Declaration of Human Rights, in the Convention on the Rights of the Child, in the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in the Recommendation N°R (90) 7 of the Council of Europe concerning information and counselling for young people in Europe.

PRINCIPLES

The following principles constitute guidelines for youth information services¹, which help to guarantee the right of young people to information:

1. Youth information services shall be open to all young people without exception.
2. Youth information services seek to guarantee the equality of access to their information for all young people, regardless of their situation, place of residence or social category.
3. The information available shall be exclusively based on the request or need expressed by the user and is independent of any other interest or concern. It should cover all subjects which interest young people.
4. Each user is received as an individual, and the response is adapted to the request.
5. There is free access to youth information services (no appointment is required).
6. Information and counselling are given in a way that respects the user's confidences and anonymity.
7. Information is free of charge.
8. The information offered is complete, impartial, accurate, practical and up-to-date.
9. Information is provided in a professional manner by staff trained for this purpose.
10. Every effort is made to ensure the objectivity of the information provided through the pluralism of the sources used.
11. The information distributed shall be independent and free of any ideological, political or commercial interest.
12. The use of sponsoring or paid advertising must respect the independence of the service and of the information provided.