

CHILDREN AND YOUTH IN THE CRIMINAL JUSTICE SYSTEM

SUMMARY OF KEY ISSUES FROM PREVIOUS CYCLES

In the third UPR cycle, the Netherlands received three recommendations related to juvenile justice. These were noted, not supported. Zambia recommended the Netherlands to consider amending legislation to allow for the separation of juveniles from adults in correctional centres. Botswana recommended the Netherlands to consider amending the juvenile justice law to cover all children under the age of 18 years. Egypt recommended the Netherlands to amend laws on the minimum age of criminal responsibility, which make it possible to deal with some children as adult criminals.

Notably, the UN Committee on the Rights of the Child also made similar recommendations in its [Concluding Observations](#) from March 2022.

Free legal aid for all juvenile suspects

NATIONAL FRAMEWORK

Despite the modernisation of the Code of Criminal Procedure and the implementation of the “Children’s directive” (EU Guideline 2016/800), a child-friendly procedure is still insufficiently guaranteed in juvenile criminal law in the Netherlands.

In a letter to Parliament the State has recently reiterated and confirmed its reservations to articles 37(c) (legal aid and detention with adults) and 40 (juvenile justice) of the UN Convention on the Rights of the Child and does not intend to withdraw them.

Following a court ruling, there is a temporary arrangement in place that allows free legal aid for minors who are summoned to the police station for questioning. However, at the request of the Minister of Legal Protection, an appeal has been lodged against this decision. It is therefore possible that this arrangement will be abolished.

To date, the government has not taken any action to end the application of adult criminal law for 16 and 17 year-olds.

In April 2018 the state promised legislation regarding the routine practice of the testing and storage of DNA in respect to children, but this has not been realized to date.

CHALLENGES

1

Children can be detained with adults.

2

The age of criminal responsibility still stands at 12.

3

16 and 17 year old children can be tried according to adult criminal law.

IMPACTS

In 2019, the police heard 448 twelve-year-old children and 1,378 thirteen-year-old children.

It is a matter of concern that 26 children aged twelve or thirteen were placed in an institution for young offenders.

16 and 17 year olds can be sentenced to 30 years in prison when tried as an adult or to a possible lifelong stay in a psychiatric institution.

CHALLENGES

4 Testing and storing of DNA in respect of children convicted of (minor) offenses is still allowed.

5 The right to a lawyer (free of charge) for minors can be restricted.

IMPACTS

Though recent data is not available on the frequency of DNA collection of children due to problems with the registration system, this is still routine practice.

If the temporary regulation ends, the right to free legal aid again only applies to minor suspects who are arrested and/or held at the police station. As a result, minors below the age of twelve and suspects who are summoned for questioning, are (again) not entitled to free legal aid before and during the interrogation at the police station.

RECOMMENDATIONS

- ↘ Guarantee a child-oriented procedure in juvenile criminal law and ensure with permanent legislation that all minor suspects have a right to free legal aid.
- ↘ Ensure that in cases where detention is unavoidable, children are not detained together with adults, including at the police station and that they are detained in a child-friendly environment/child friendly holding facilities.
- ↘ Reconsider the routine practice of the testing and storage of DNA in respect of children convicted of certain specified offences and urge the state to finalize the legislation for children convicted to community service of 40 hours or less as was promised in April 2018.
- ↘ Raise the minimum age for criminal responsibility to 14 or 16 years old.

QUESTIONS

- ↘ What is the government doing to ensure a permanent right to free legal aid for all juvenile suspects, including but not limited to those who are not arrested but summoned to the police station for questioning?
- ↘ When can the legislation announced in April 2018 regarding the collection of DNA material of juvenile suspects sentenced to 40 hours or less of community service be expected?

Guarantee a child-friendly procedure in youth criminal law

Sources

- ↘ [Joint Submission to the Human Rights Council by the Dutch NGO Coalition on Children's Rights \(2022\)](#)
- ↘ [Fifth NGO report of the Dutch NGO Coalition for Children's Rights to the UN Committee on the Rights of the Child \(2021\)](#)

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