

The Netherlands – Input for List of issues prior to reporting *The Ombudsman for Children*

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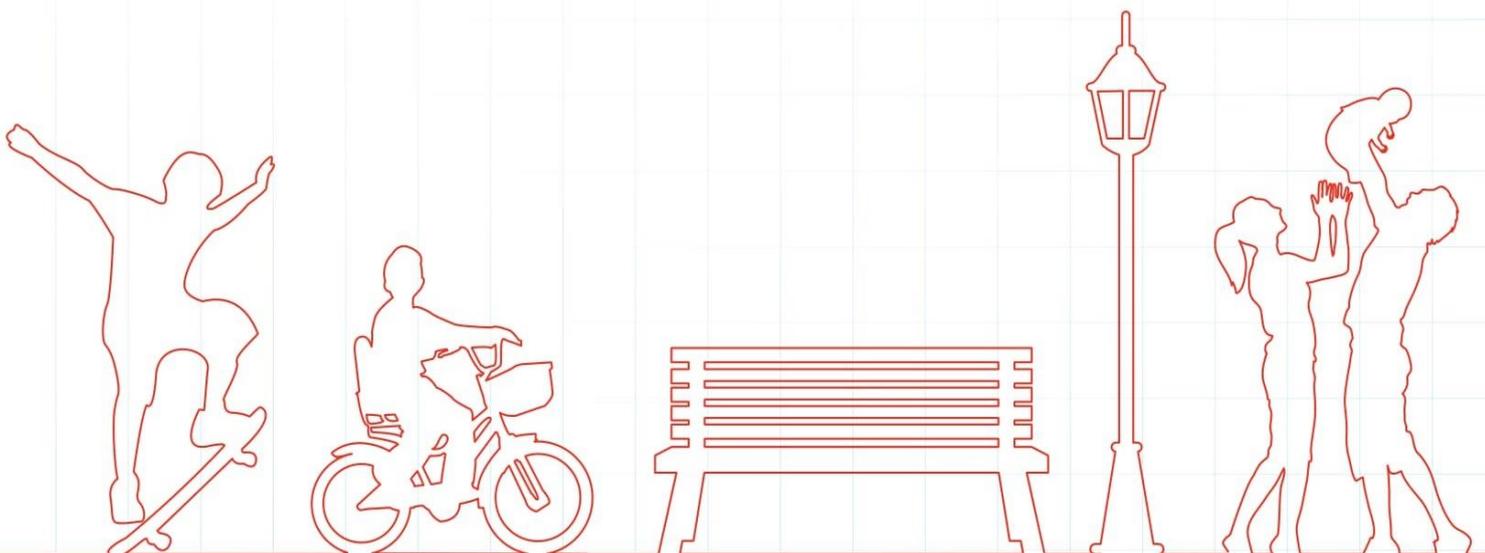


Table of contents

Introduction	1
1. Multiple problems and the lack of an integrated approach	1
<i>General principles</i>	
2. Regional differences in care for children	2
<i>General principles, violence against children, family environment and alternative care, disability, basic health and welfare, education</i>	
Municipalities.....	2
Educational networks	3
Caribbean Netherlands	3
3. Legal inequality: differences between groups of vulnerable children	4
<i>General principles, violence against children, family environment and alternative care, special protection measures, social security</i>	
4. Inadequate integration of children’s interests and voices	5
<i>General principles, special protection measures, family environment and alternative care, education</i>	
5. Issues in specialist care and institutions.....	6
<i>Disability, basic health and welfare, family environment and alternative care, education</i>	
6. Poor availability and comparability of data	8
<i>General measures of implementation</i>	

Introduction

The role of the Ombudsman for Children is to help ensure that children's rights are upheld in the European and Caribbean Netherlands. We do this by providing information about children's rights, handling individual cases in which children's rights may be threatened, conducting research and supervising complaint-handling by other organisations. We provide advice, solicited or otherwise, to legislators, policymakers and professionals on how to act from the perspective of children's rights and call them to account if they do not uphold children's rights. We involve children and young people in everything we do and take account of their views, interests and experiences as far as possible.

Because our activities are so wide-ranging and cover every area of relevance to the lives of children, we have a good overview of the various problems that children may face in the Netherlands. In this report, we focus on signals we ourselves have detected and issues that are causing us the most concern. These are:

1. Multiple problems and the lack of an integrated approach
2. Regional differences in the care provided to children
3. Legal inequality: differences between groups of vulnerable children
4. Inadequate integration of children's interests and voices
5. Issues in specialist care and institutions
6. Poor availability and comparability of data

Below, we provide further explanation of our concerns about children's rights and recommend questions for the Committee to put to the Dutch state.

1. Multiple problems and the lack of an integrated approach

General principles

Although most children in the Netherlands are doing well, around 5-10% experience problems of such seriousness that they affect their quality of life.¹ Cases become even more problematical if a child experiences multiple issues in different areas, and therefore has to deal with various different authorities, laws and regulations. In a survey² into the welfare of children in the Netherlands conducted by the Ombudsman for Children, a quarter of the 1,703 children questioned said that they were growing up in a vulnerable situation.³ Around a third of these children have multiple vulnerabilities. Our analysis shows that there are strong links between certain vulnerabilities. For

¹ Of all 1,703 respondents who contributed to our *Als je het ons vraagt* (If You Ask Us, 2018) survey, 6.8% rated their lives as unsatisfactory. Figures from Statistics Netherlands (CBS) show that, in the period 2015-2017, 8% of young people aged 12 to 25 faced mental health issues.

The Ombudsman for Children (2018). [Kinderrechtentour 2018 Als je het ons vraagt](#). The Hague: The Ombudsman for Children. Statistics Netherlands (2018). [One in 12 young people have poor mental health](#). The Hague: Statistics Netherlands (CBS).

² The Ombudsman for Children (2018). [Als je het ons vraagt. Kinderrechtentour 2018](#). The Hague: The Ombudsman for Children.

³ For example, this concerns children who report that they have to survive on limited money at home, have divorced parents whose relationship has broken down or are in need of youth support because of problems.

example, growing up in financially difficult circumstances has strong correlations with problems at home (arguments) and divorced parents. Children who face multiple problems rate their own lives less highly than children who report only a single vulnerability. An integrated vision and approach is required in order to protect and help these vulnerable children effectively.

Since 2015, municipalities in the Netherlands have been responsible for youth support and tackling child abuse and – for even longer than that – for the prevention of child abuse and combating poverty. Although this offers opportunities for an integrated approach, this is still far from sufficiently evident in the municipalities’ working methods. In many municipalities, policy aimed at combating child poverty focuses primarily on material support and provisions away from the home⁴, when children also need a stable home situation and social and emotional support. The municipal departments responsible for these areas often fail to apply any coordinated approach. At national level, the various ministries have set up programmes and initiatives aimed at contributing towards effective care for and protection of children.⁵ Although children with multiple issues are an important target group, it remains unclear how all of these programmes interrelate in practice.

- *The Ombudsman for Children advises the Committee to ask the Dutch state if it acknowledges that there is still insufficient cohesion in support for young people and what efforts it is making to achieve a more integrated vision and approach at both municipal and national level that makes children’s developmental needs a priority.*

2. Regional differences in care for children

General principles, violence against children, family environment and alternative care, disability, basis health and welfare, education

The Ombudsman for Children notes that the regional disparities in terms of access to and quality of support and care for children are excessive. This concerns differences between municipalities and school networks and between the European Netherlands and the Caribbean Netherlands. Differences are not problematic in themselves and a more tailored approach is actually in the interests of children in many cases. However, we note that these differences have become so excessive that they are resulting in legal inequality.

Municipalities

Municipal policy on youth support, combating poverty and preventing and tackling child abuse and mistreatment varies widely. Although a comprehensive overview of this is

⁴ Examples of provisions of this kind include laptops for school, bicycles, public transport subscription or sports lessons.

⁵ A selection of completed, ongoing and future initiatives and programmes covering a wide range of areas: Thuiszitterspact; Actieprogramma Zorg voor de Jeugd, (interdepartmental); Landelijk actieprogramma Kansrijke Start; Actieplan Verbetering Feitenonderzoek in de Jeugdbeschermingsketen; Actieplan Pleegzorg; Actieplan voor kleinschalige gezinsgerichte opvang (under development); Uitvoeringsprogramma Scheiden zonder schade, (interdepartmental); Programma geweld hoort nergens thuis, (interdepartmental); Actieprogramma Dak- en thuisloze jongeren; Actieplan Vakmanschap jeugdprofessionals (under development). Completed: Kinderen Veilig Actieplan aanpak kindermishandeling 2012-2016 (monitor actieplan Kinderen veilig).

lacking, there are signs that the differences in terms of access to and quality of care and support are excessive. With regard to youth support, we are often approached concerning treatments that have been refused because the municipality concerned has failed to purchase the treatment or has run out of budget. Children and parents also complain of being referred from one authority to another, excessive paperwork and of not always feeling properly informed about the help and support available. This can result in a delay that ultimately means children receive more intensive care than they originally needed. The government has acknowledged the signals and intends to tackle them by means of the *Zorg voor de jeugd* (Youth Care) action programme.⁶ More than a year after the programme's launch, the reports we receive about such issues continue undiminished.⁷

In 2017, municipalities had more policy aimed at preventing child abuse and mistreatment than three years previously, although around 5% still had little or no prevention policy.⁸ However, municipalities point out that they have only a limited picture of the target groups at enhanced risk and of the reach of their policy. Recent figures show that the number of children being mistreated or abused is not falling.⁹ There are also significant variations in the support provided for children in poverty, both in terms of the type of provisions offered and the rules governing eligibility for those provisions.¹⁰

Educational networks

The Appropriate Education Act (*Wet Passend onderwijs*) aims to ensure that all children can receive an appropriate education that supports them in fulfilling their potential. Responsibility for this has been placed in the hands of school networks that have a high level of freedom to shape the educational support provided. This results in wide variations between the schools and the networks. This is compounded by the fact that the networks need to collaborate with different municipalities to gain additional assistance in the form of youth support, which leads to practical disagreements about who should fund the care at school, according to complaints received by the Ombudsman for Children. This collaboration is not yet proving sufficiently successful, as the Minister recently reported to Parliament.¹¹ A key cause for concern is the fact that the number of children receiving no education for shorter or longer periods is not falling. Similarly, the number of exemptions from compulsory education is also more or less stable. The Appropriate Education Act will be evaluated in 2020.

Caribbean Netherlands

⁶ Ministry of Health, Welfare (VWS) and Sport & Ministry of Justice and Security (J&V) (2018). [Actieprogramma Zorg voor de jeugd](#). The Hague: VWS and J&V.

⁷ The Ombudsman for Children (2019). [Zorgenbrief jeugdhulp](#). The Hague: The Ombudsman for Children.

⁸ The Ombudsman for Children & Netherlands Youth Institute (2017). [De gemeentelijke inzet voor preventie van kindermishandeling, Stand van zaken oktober 2017](#). The Hague: Ombudsman for Children.

⁹ Netherlands Youth Institute (2019). [Cijfers over jeugd en opvoeding: Kindermishandeling](#). Visited on 21-6-2019.

¹⁰ The Ombudsman for Children (2018). [Alle kinderen kansrijk](#). The Hague: The Ombudsman for Children.

¹¹ Voortgang Zorg voor de jeugd, [Parliamentary Papers II](#), 2018/19 – 34880-15.

There may be stark differences within the European Netherlands, but this applies to an even greater extent to the differences between the European Netherlands and the Caribbean Netherlands. Children growing up in the Caribbean part of the Netherlands often have to deal with different laws, rules and provisions and, in general, their rights are less effectively protected. This can be seen, for example, in the approach to tackling poverty, child abuse and mistreatment, access to support and assistance and the level and availability of different types of education.¹² In relative terms, there are more poor children in the Caribbean Netherlands. However, the level of child benefit and support is lower, no social minimum has been set and living costs are higher than in the European Netherlands.¹³ There are concerns about the limited offering for children needing additional support and about the availability and quality of youth support.¹⁴ The Ombudsman for Children can see no justification for distinguishing between children when it comes to their level of protection from violence, the ability to meet basic needs and the quality of education.¹⁵

- *The Ombudsman for Children advises the Committee to ask the Dutch state if it acknowledges that the regional differences between municipalities and between networks have become excessive, especially in terms of access to and quality of youth support, the prevention of child abuse and mistreatment, the approach to child poverty and the availability and quality of educational support.*
- *The Ombudsman for Children also advises the Committee to ask how the Dutch state is helping to reduce the differences identified between municipalities and between networks and ensure that the availability of assistance, care and support meets a minimum standard in all municipalities and networks.*
- *Finally, the Ombudsman for Children advises the Committee to ask what the Dutch state is doing to reduce the differences in terms of access to provisions and the protection of rights between the European Netherlands and the Caribbean Netherlands.*

3. Legal inequality: differences between groups of vulnerable children

General principles, violence against children, family environment and alternative care, special protection measures, social security

Because of the way in which access to provisions is regulated, specific groups of children have no or only limited access in various areas. Although the number of children affected by this may be small, the consequences for individual children can be significant.

¹² The Ombudsman for Children (2017). [Als je het ons vraagt. De Kinderombudsman op Kinderrechtentour in Caribisch Nederland](#). The Hague: The Ombudsman for Children.

¹³ Straatmeijer, J. (2018). [Onderzoek naar een ijkpunt voor het sociaal minimum in Caribisch Nederland](#). Amsterdam: Regioplan.

¹⁴ The Ombudsman for Children (2018). [Rapportbrief: Onderwijs op Bonaire](#). The Hague: The Ombudsman for Children. The Ombudsman for Children (2017). [Als je het ons vraagt. De Kinderombudsman op Kinderrechtentour in Caribisch Nederland](#). The Hague: The Ombudsman for Children.

¹⁵ With the introduction of the new state structure on 10 October 2010, the Netherlands committed to working towards the same level of provisions in the Caribbean Netherlands as in the European Netherlands. In accordance with Article 132 a, para 4 of the Constitution, a difference between provisions is permitted only if justified.

Children who are themselves living legally in the Netherlands¹⁶, but are living with a parent with no residence permit, are not entitled to claim financial allowances and benefits¹⁷ intended for children. This is regulated in the Benefit Entitlement (Residence) Act (*Koppelingswet*), which aims to exclude people who do not have residence status from benefits. The detention of one of the parents or marriage with a partner abroad can also result in a family losing the right to financial support for the children. These children and families sometimes live in dire poverty. This situation is related to the Netherlands' choice to have a reservation on Article 26 of the Children's Rights Convention. The government is still deliberating on the recommendation made by the Ombudsman for Children in 2017 to amend the Benefits Entitlement (Residence) Act.

Children who live in an institution and no longer have contact with their parents can also face a difficult financial position. They often receive no allowance for clothing, school and sports equipment or pocket money for personal spending. There is a lack of clarity among municipalities and institutions with regard to who is responsible for these allowances.¹⁸

It is estimated that there are dozens of children with Dutch parents who travelled to the caliphate living with their parents in camps in Syria, often in terrible conditions. Most of these children are entitled to Dutch nationality. In order to obtain assistance from the government to return to the Netherlands, the women and children are expected to take the initiative in reporting to the nearest Dutch embassy (outside Syria).¹⁹ However, the women find it impossible to leave the camps with their children, which means that the children are essentially imprisoned there. The Ombudsman for Children takes the view that the Dutch government should join forces with other European governments in making concerted efforts to return the children to Europe and provide them with the protection they need. Until the children return to the Netherlands, the Dutch government must ensure that the developmental needs of the children in the camps are met as effectively as possible.

- *The Ombudsman for Children advises the Committee to ask whether the Dutch state acknowledges that there are groups of children who, as a result of the circumstances of the child or his or her parent or legal guardian, have insufficient access to financial support and what steps it is taking to rectify this.*
- *The Ombudsman for Children advises the Committee to ask the Dutch state how it is shouldering its responsibility vis-à-vis those children with a Dutch parent in the Syrian camps, taking account of the principle of non-discrimination.*

4. Inadequate integration of children's interests and voices

¹⁶ This problem is no longer an issue for children of Dutch nationality since parents of such children are now eligible to apply for EU residence status based on the Chavez-Vilchez judgment by the European Court of Justice.

¹⁷ These include child benefit, the childcare allowance and the child budget.

¹⁸ The Ombudsman for Children (2019). [Krijg jij al zakgeld?](#) The Hague: The Ombudsman for Children.

¹⁹ The Dutch policy has been confirmed on various occasions by the government, including in [Parliamentary Papers II 2018/19 – 29754-492](#).

General principles, special protection measures, family environment and alternative care, education

Legislation, policy and implementation are still failing to give the interests of children sufficient attention. This is most obvious in immigration law, in which the interests of the child have no independent status. This means that the interests of children and other interests in admission procedures are not stated explicitly and there is therefore no explicit consideration of the best interests of children as required by Article 3 of the CRC and GC 12 and 14. A private member's bill was put to the House of Representatives some time ago proposing that the interests of children be enshrined in immigration law.²⁰ It remains unclear whether this bill will be passed.

In addition, the Ombudsman for Children is particularly concerned about the intended changes in juvenile criminal law involving committal to a juvenile detention institution, known as the 'PIJ measure'²¹, which will result in the disappearance of the educational aspect and therefore a lack of focus on the child's interests in terms of educational development. This change will mean that children are more likely to be treated as adults.

The interests of the child are also inadequately enshrined in more far-reaching measures in youth support. The Ombudsman for Children regularly receives complaints about the judicial treatment of children, especially in the fields of youth support, education and custody/access. Our research into children under guardianship and/or living in foster families reveals that their main complaint is that they are not sufficiently involved in decision-making processes.²²

- *The Ombudsman for Children advises the Committee to ask whether the Dutch state acknowledges that GC 12 and 14 are insufficiently implemented in legislation and practice and what it is doing to ensure that children are heard and that their interests are a primary consideration.*
- *The Ombudsman for Children also advises the Committee to ask for specifics with regard to the fields of migration, youth support, education and custody/access.*

5. Issues in specialist care and institutions

Disability, basic health and welfare, family environment and alternative care, education

²⁰ [Parliamentary Papers II](#) 2016-19 – 34541.

²¹ The aim of this draft bill revising the implementation of decisions in criminal law (*Invoeringswet USB*) is to achieve greater effectiveness and promptness in sentencing, but since the PIJ measure has a more educational focus, there is a clash: the streamlining and changes to terminology would also result in a change to the assessment framework for the PIJ measure. This legislative amendment is scheduled to be discussed in Parliament in the second quarter of 2019.

Council for the Judiciary (*Raad voor de Rechtspraak*, 2019). [Advies Wijziging van het Wetboek van Strafvordering en enkele andere wetten in verband met de invoering van de Wet herziening tenuitvoerlegging strafrechtelijke beslissingen](#). The Hague: Council for the Judiciary

²² The Ombudsman for Children (2018). [Zorgenbrief voogdij](#). The Hague: The Ombudsman for Children. The Ombudsman for Children (2019). *Pleegkinderen aan het woord*. The Hague: The Ombudsman for Children. Publication expected in July 2019.

There are major problems with access to specialist care for vulnerable children. This applies both to care for physical disorders and psychiatric and/or behavioural problems.

The problems concerning access to specialist care are worse in the case of children with psychiatric and/or behavioural problems. Children with life-threatening psychiatric disorders, such as anorexia or severe depression, often wait for months for the intensive care they need. Specialist assistance to prevent a care order or a placement in a residential setting is hardly available if at all. The same applies to family admissions, where the whole family receives intensive help, and treatment places for children with both psychiatric and behavioural problems.²³ Judges tell us that they are regularly obliged to commit children who actually do not belong there to juvenile detention centres because of a lack of any alternative. A lack of suitable places also means that children often spend unnecessarily long times in intensive or secure forms of juvenile care when they should have been placed elsewhere.

When children are placed in institutions offering specialist psychiatric healthcare or youth support, there are various issues with the assistance and care provided. These children point out that isolation and restraint continue to be used as management measures. The aim should be to bring a complete end to this. There are already psychiatric and youth care institutions that operate successfully with no isolation areas. Another issue faced by children in institutions is the fact that the education offered often fails to match the children's level and potential.

For children in need of hospital care as well as those who require specialist youth support, the transition to adult care is often far from smooth. Often the preparations for the transition and the transfer to adult care itself are poorly organised in practice.²⁴

Children with physical disorders generally have good access to hospital care. There are some difficulties if they require intensive rehabilitation or nursing care following a stay in hospital. Doctors tell us that it can take time to arrange a placement in an extramural setting or integrated care at home, leaving patients in hospital for unnecessarily long periods.

In the Caribbean Netherlands, there are few places available where children can stay if they are unable to live at home for whatever reason. On Bonaire, there are three houses where children can stay temporarily, but this option does not exist on Saba and Sint Eustatius. As a result, children do not receive the most appropriate care or need to leave the island and be separated from their parents. Supervised or protected living for young adults is not available on any of the three islands. As a result, it is impossible for minors to prepare for adulthood and there is no suitable (protected) residential situation for young adults who need extra support.

²³ This is according to various discussions held by the Ombudsman for Children with providers of youth support and child and juvenile psychiatry (and their associations).

²⁴ Voortgang Zorg voor de jeugd, [Parliamentary Papers II](#), 2018/19 – 34880-15. FNO Zorg en Perspectief et al. (2019). [Pledge Alles is gezondheid voor goede transitiezorg](#). Amsterdam: FNO.

- *The Ombudsman for Children advises the Committee to ask the Dutch state if it acknowledges that there are serious issues with regard to access to quality specialist assistance.*
- *The Ombudsman for Children advises the Committee to ask the Dutch state for specifics with regard to tackling waiting times in specialist youth support, rehabilitation or nursing care and juvenile psychiatric care and increasing the availability of alternatives for institutional care and secure youth care facilities.*
- *The Ombudsman for Children advises the Committee to ask the Dutch state how it is approaching the use of isolation and restraint in institutions and ensuring that education is offered at all levels in institutions.*
- *The Ombudsman for Children also advises the Committee to ask what provisions will be provided in the Caribbean Netherlands in terms of appropriate forms of protected, supervised residential care for minors and young adults.*

6. Poor availability and comparability of data

General measures of implementation

A great deal of data is collected by various organisations in the youth domain. At the same time, there are several issues with the availability and comparability of data, which makes it difficult, if not impossible, to gain a clear overall impression of the well-being of children in the Netherlands and of which children's rights are under the most pressure. In the European Netherlands, we have identified issues in juvenile psychiatric care in particular, and to a lesser extent in other areas.²⁵ In the Caribbean Netherlands, there are issues in all areas.

There are four important issues. Firstly, none of the organisations that collect data about children and young people do so for *all* the areas that affect children. Secondly, when assistance is provided to families, information about minors is not always recorded. Additionally, organisations tend to collect data in their own area of expertise, from different age groups and in their own particular ways. As a result, it is not possible to compare and aggregate data.²⁶ Finally, there is not always public access to data.

These problems have become more intense since youth care was decentralised, because data is now supplied to one of the 355 municipalities rather than one of the four healthcare insurance companies, causing even greater fragmentation.²⁷

²⁵ Kenniscentrum Kinder- en jeugdpsychiatrie et al. (2019). [Psychische gezondheid van de jeugd in beeld](#). Utrecht: Kenniscentrum Kinder- en jeugdpsychiatrie (Child and Youth Psychiatry Expertise Centre).

²⁶ A great deal of data about young people concerns those over 18 and not minors. It often covers different age groups. For example, the *Health behaviour in school-aged children* study concerns young people between ages 11 and 17 whereas the *GGD Gezondheidsmonitor* covers 14 to 16-year-olds. Stevens et al. (2017). HBSC 2017 [Gezondheid en welzijn van jongeren in Nederland](#). Utrecht: Utrecht University. Volksgezondheidszorg.info (2015). [Gezondheidsmonitor Jeugd](#). Visited on 21-6-2019.

²⁷ An exception to this is the *Lerende Databank van het Samenwerkingsverband Effectieve Jeugdhulp* (SEJN), which has been collecting data on youth support from its affiliated organisations since 2017. SEJN is attempting to ensure that data can be compared in order to gain a greater insight into what works in youth support. However, this data is not available to parties not affiliated to SEJN.

- *The Ombudsman for Children advises the Committee to ask the Dutch state if it acknowledges that data from different organisations cannot be properly compared and collated and what it is doing to improve this, in order to guarantee a better overall picture of the well-being of Dutch children.*
- *The Ombudsman for Children also advises the Committee to ask for specifics with regard to the collection of data on minors in the Caribbean Netherlands, across all areas, and the collection of data on minors in (specialist) juvenile psychiatric care.*