

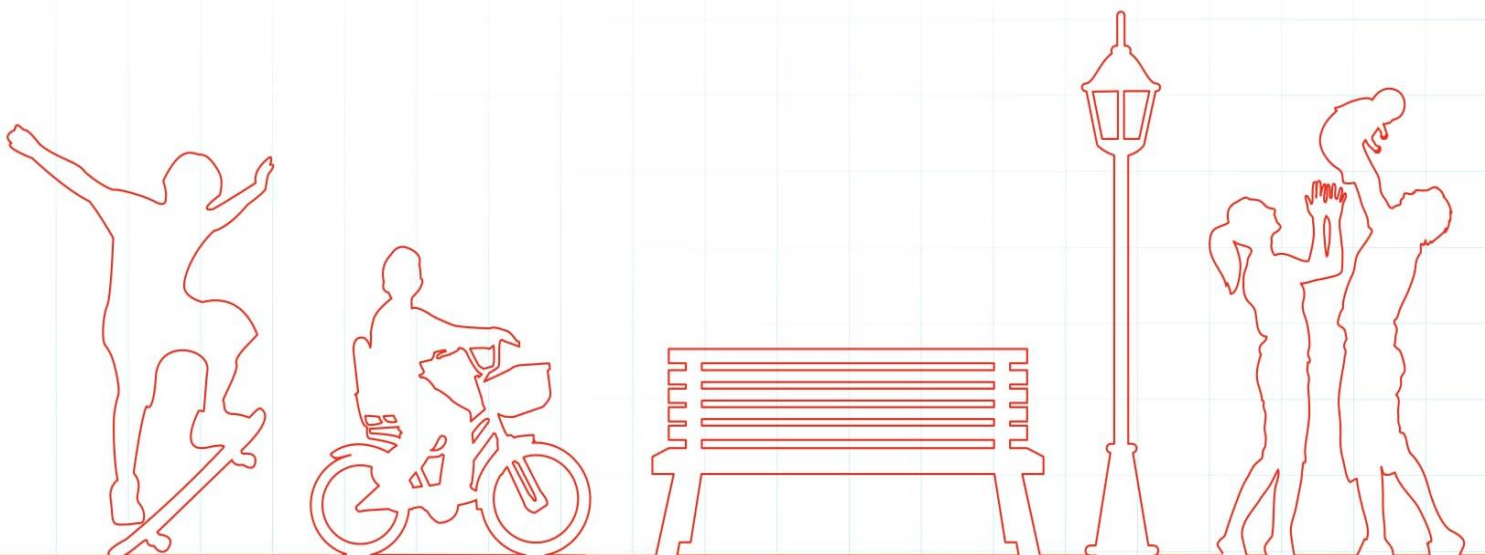


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# The Netherlands – Report to the UN Committee on the Rights of the Child

## *The Ombudsman for Children*

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## **Introduction**

The role of the Ombudsman for Children is to help ensure that children's rights are upheld in the European and Caribbean Netherlands. This is essential work, because children's rights face challenges in our country, too. The Ombudsman for Children is there for children whose rights are in jeopardy. Those children – as well as their parents and guardians – are often unable to do anything about the situation in which they find themselves. This is why the Ombudsman for Children seeks to press those involved to improve their situation. The Ombudsman for Children does this by highlighting problems and providing advice, solicited or otherwise, to legislators, policymakers and professionals. The Ombudsman for Children also involves young people in its activities, in order to take account of their views, interests and experiences in its work. Children, parents and professionals can also submit complaints to the Ombudsman for Children themselves, or ask for support or advice in situations where they suspect that children's rights are not being respected. In cases where an official complaint has not been handled satisfactorily, the Ombudsman for Children may also agree to review the relevant case. This forms the core of the Ombudsman's work.

In this report, we will discuss in more detail the issues that we presented to your Committee in 2019. We will describe those issues within six overarching themes. Those themes are based on a general analysis of the situation around children's rights in the Netherlands, according to indications from our own activities and investigations, research and indications from the outside world, and research carried out by other institutions in the period 2016-2021. The six themes represent our foremost concerns regarding the upholding of children's rights, and they group together the issues that we describe within them. All six themes have been relevant for some time in various policy areas and at various levels of government. We do not view this approach as exhaustive, but it does provide a clear focus on what we see as the most important challenges facing the Netherlands. For additional information, we would refer readers to the Fifth NGO Report of the Children's Rights Collective.

The six overarching themes are:

1. Multiple problems and the lack of an integrated approach
2. Excessive regional differences in the services offered
3. Legal inequality for groups of vulnerable children
4. The inadequate integration of children's interests and voices
5. Issues in specialist care and support
6. Inadequate commitment to general implementation measures

With respect to each theme, we will now provide a more detailed explanation of our main concerns over children's rights and put forward some suggestions for recommendations to the Dutch state. Unless stated otherwise, the recommendations apply to both the European and Caribbean Netherlands.

## 1. Multiple problems and the lack of an integrated approach

*General principles, violence against children, children with a disability, health and welfare, education.*

Although most children in the Netherlands are doing well, around 5-10% experience problems of such seriousness that they affect their quality of life.<sup>1</sup> Cases become even more problematic if a child experiences multiple issues in different areas, and therefore has to deal with various different authorities, laws and regulations. An estimated 40,000 families in the Netherlands have to cope with a combination of socio-economic problems, parents with psychosocial problems and/or children with psychosocial problems.<sup>2</sup> Research by the Ombudsman for Children involving 1,703 children shows that when children indicate that they have to contend with vulnerabilities, their lives are often affected by multiple issues.<sup>3</sup> For example, growing up in financially difficult circumstances has a strong correlation with problems at home (arguments) and a broken family. It also seems that children who face multiple problems rate their own lives less highly than children who report only a single vulnerability. An integrated vision and approach that leads to improvements in multiple domains is required in order to improve the well-being of these children and their quality of life.

### *Action programmes*

In our earlier report, we expressed concern that children who have to cope with multiple problems are still not receiving adequate support. That concern remains undiminished. In recent years, the government has launched action programmes in the areas of education, youth support, violence against children and family law.<sup>4</sup> Children coping with multiple problems are specifically mentioned as a target group for several of these programmes. A positive aspect of this approach is that the action programmes bring central government, municipalities and other relevant actors together, enabling them to work on the basis of a shared vision of and approach to a problem. However, if there is insufficient coordination between these action programmes, there is a high risk that care and support for children will remain fragmented. For the time being, there is insufficient clarity on how responsive these programmes are to one another and what impact they are having, collectively, on the situation and well-being of the children they are designed to help.

<sup>1</sup> 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. In 2020, the results were similar. 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) [Als je het ons vraagt. Kinderrechten tour 2018](#) [‘If You Ask Us. Children’s Rights Tour 2018’]. The Hague: The Ombudsman for Children. The Ombudsman for Children (2020). [Als je het ons vraagt. Thuis in 2020](#). [‘If You Ask Us. At Home in 2020.’] The Hague: The Ombudsman for Children. CBS (2018). [One in 12 young people have poor mental health](#). The Hague: CBS.

<sup>2</sup>Kann-Weedage, D., Zoon, M., Addink, A., van Boven, J., Berger, M. & de Wilde, E.J. (2017). [Aantal en kosten van multiprobleemgezinnen in Almelo](#) [‘Number and cost of families with multiple problems in Almelo’]. Utrecht: Netherlands Youth Institute.

<sup>3</sup> The Ombudsman for Children (2018) [Als je het ons vraagt. Kinderrechten tour 2018](#) [‘If You Ask Us. Children’s Rights Tour 2018’]. The Hague: The Ombudsman for Children.

<sup>4</sup> A selection of completed, ongoing and future initiatives and programmes: Thuiszitterspact; Actieprogramma Zorg voor de Jeugd (inter-departmental); Actieprogramma Kansrijke Start; Actieplan Verbetering Feitenonderzoek in de Jeugdbeschermingsketen; Actieplan Pleegzorg; Actieplan voor kleinschalige gezinsgerichte opvang (forthcoming); Uitvoeringsprogramma Scheiden zonder schade (inter-departmental); Programma geweld hoort nergens thuis (inter-departmental); Actieprogramma Dak- en thuisloze jongeren; Actieplan Vakmanschap jeugdprofessionals (forthcoming). Completed: Kinderen Veilig Actieplan aanpak kindermishandeling 2012-2016 (monitor actieplan Kinderen veilig).

### *Integrated approach to poverty*

When it comes to tackling poverty, we also observe that the battle against these problems is still insufficiently integrated at the national and municipal levels. Nor is there always recognition that an integrated approach is required. In 2017 the Ombudsman for Children made recommendations for an integrated and development-oriented approach to child poverty, which prioritised the perspective of child development and aimed to improve children's quality of life in all the development domains that are important to that child.<sup>5</sup> The government promised to come up with an integrated policy on the basis of that study, but it has commissioned another study first. That study is currently being finalised. We note that although policy intentions<sup>6</sup> have been formulated and actions have been planned, in practice the policy for children in poverty in many municipalities still focuses primarily on providing material support and facilities outside the home<sup>7</sup> and not on all the other areas of life on which child poverty has an impact.

### *Children with multiple support needs*

Many children with complex and/or multiple educational support needs also require youth support, youth mental health services or care from their municipality. The lack of an integrated vision and policy in the fields of education services and youth care services also undermines the provision of adequate support for these children. The separate funding channels for youth support and education, as well as the different laws and regulations in each domain, appear to be major obstacles. Although measures have been taken by the relevant ministries to improve cooperation since 2018, and new experiments and pilots were announced in November 2020, the Ombudsman for Children has yet to observe how obstacles to cooperation at the national level will be removed.

### *Recommendations*

- *Develop a national and integrated vision for children's rights including clear goals and a strategy for achieving these. Incorporate the existing action programmes and clarify how the various programmes relate to one another and contribute to the goals;*
- *At the national level, adopt a quicker, more decisive and more ambitious approach to developing and implementing an integrated child poverty policy.*
- *Develop an integrated plan to remove barriers to funding as well as legal and regulatory obstacles and obstacles to implementation, and take responsibility for implementation so that children with complex support needs in the areas of education, care and youth services receive the right support.*

## **2. Excessive regional differences in the services offered**

*General principles, violence against children, family environment and alternative care, children with a disability, health and welfare, education*

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<sup>5</sup> The Ombudsman for Children (2017) [Alle kinderen kansrijk](#) ['Opportunities for all children']. The Hague: The Ombudsman for Children.

<sup>6</sup> Examples of provisions of this kind include laptops for school, bicycles, public transport subscription or sports lessons.

<sup>7</sup> Four ambitions have been identified: 1) All children in poverty should be able to participate in society 2) Commitment to a reduction in the number of low-income households with children 3) A periodic survey of deprivation among children 4) More publicity around good examples of tackling child poverty.

The Ombudsman for Children reported in 2019 that there are excessive regional disparities when it comes to access to and the quality of support, care and other services for children. This involves differences between municipalities and school networks, and between the European Netherlands and the Caribbean Netherlands. The situation outlined in 2019 has remained largely unchanged. The fact that there are regional variations is inevitable in view of the decentralised manner in which services such as youth support, tackling child abuse, anti-poverty measures and education services are organised in the Netherlands. Compliance with the UNCRC and equal access to services should be guaranteed by central government, but there are no nationally applicable standards that children are assured of with respect to many services.<sup>11</sup>

### *Municipalities*

Municipal policy and implementation on youth support, combating poverty and preventing and tackling child abuse and mistreatment vary widely. In 2019, we noted that although a comprehensive overview is lacking, there are signs that the differences in terms of access to and quality of care and support are excessive.

There are problems in youth support because municipalities have not procured certain treatments or because the relevant budget has already been spent, which means that the most appropriate care is not provided. The large volumes of paperwork – due to contracts having to be signed with multiple municipalities – are also perceived by the relevant institutions and independent professionals as an obstacle to spending enough time on care for the children concerned. Neither do children and parents always know what support is available. The national *Zorg voor de jeugd*<sup>8</sup> (Youth Care) action programme is designed to tackle these problems. Since our last report, the situation in (specialist) youth mental health services, in particular, seems to have deteriorated further. In March 2021, the Health and Youth Care Inspectorate saw major regional differences in how municipalities arrange youth mental health services.<sup>9</sup> There is a mismatch between supply and demand in various regions. Coordination and cooperation at the regional level is inadequate in this respect. For example, there is not enough information on regional and supra-regional demand, the support available and the allocation of funding. As a result, young people cannot be moved easily from one place in the care system to another. The Ombudsman for Children has also expressed concern about whether specialist forms of youth support are adequately available both nationally and regionally. Many municipalities have seen their revenues fall and their spending rise as a result of the COVID-19 pandemic, which is making this problem even more acute.

When it comes to child abuse, we note that cooperation between the various actors in the event of (suspected) child abuse remains less than optimal. The four inspection services that cooperate within Social Domain Monitoring (TSD) conclude that safety risks in families are often obscured when the family is transferred to the local network by Safe

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<sup>8</sup> Ministry of Health, Welfare and Sport (VWS) & Ministry of Justice and Security (J&V) (2018). [Actieprogramma Zorg voor de jeugd](#) ['Youth Care Action Programme']. The Hague: VWS and J&V.

<sup>9</sup> Health and Youth Care Inspectorate (IGJ) (2021). [Factsheet: onvoldoende tijdige en juiste hulp voor jongeren met ernstige psychische problemen](#). ['Factsheet: timely and effective support for young people with severe psychological problems is lacking'] Utrecht: IGJ.

at Home.<sup>10</sup> This is all the more worrying now that there are signs of an increase in child abuse during the COVID-19 pandemic. The inspectorates note that it is possible to restore safety in families if all parties within a municipality work together, and they therefore recommend that municipalities take the lead in tackling domestic violence or child abuse within the family. The wider issues in youth care also have consequences for the victims of child abuse. They often have to wait too long for appropriate help.

There is also significant divergence 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. There has been no change in this respect.

#### *Schools, school governing boards and school partnerships*

Under appropriate education (passend onderwijs), it is up to schools, school governing boards and school partnerships to define who is eligible for additional support and which support is provided. There are differences between school partnerships and between schools within the same partnership when it comes to the support offered. These differences are inherent in the decentralised way in which appropriate education is organised, the open nature of the standards and the policy autonomy that school partnerships and schools have. The open standards and freedom of schools and school partnerships to grant support as they see fit do, in principle, provide benefits in terms of the options for customisation. Schools have become more flexible, according to the final evaluation of Appropriate Education carried out in 2020.<sup>11</sup> However, there are no national standards that specify which services children must be able to access. Due to the lack of national standards and policy freedom, it is also impossible to ascertain whether customisation is occurring successfully in practice. For this reason, it is not possible to conclude whether all pupils who need support are actually receiving adequate support. We know from our work as Ombudsman for Children and from our own investigations that access to services varies between schools and between school partnerships.<sup>12</sup>

#### *Caribbean Netherlands*

There may be stark differences between municipalities in 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 is the case in areas such as tackling child abuse and poverty among children, access to and quality of youth care and the supply and quality of educational support. This means that the rights of children in the Caribbean Netherlands are less well protected than those of children in the European Netherlands.

<sup>10</sup> Social Domain Monitoring (TSD) (2021). [Maak werk van herstel van veiligheid in gezinnen](#). ['Invest in family safety and healing'].

<sup>11</sup> Ledoux, G. & Waslander, S. m.m.v. Eimers, T (2020). [Evaluatie passend onderwijs. Eindrapport mei 2020](#). ['Evaluation of Appropriate Education. Final Report May 2020'] Amsterdam: Kohnstamm Instituut | Tilburg: TIAS School for Business and Society, Tilburg University| Nijmegen: KBA Nijmegen.

<sup>12</sup> The Ombudsman for Children (2020). [Van passend naar inclusief. Kinderen over hun perspectief op inclusief onderwijs](#) ['From appropriate education to inclusive education. Children's perspectives on inclusive education']. The Hague: The Ombudsman for Children.

Child abuse and neglect are still a major problem. Tackling these issues must remain a priority. It is positive that the Non-violent Parenting Bill for the Caribbean Netherlands has been submitted to the Lower House.<sup>13</sup> This proposed legislation stipulates that parents may not use mental or physical violence or any other form of degrading treatment when caring for or bringing up their child. One area that requires attention is that it is still not possible to report violence in the Caribbean part of the Netherlands to a reporting point anonymously. As a result, professionals and others are reluctant to report any suspicions that they may have. Neither has the Istanbul Convention been ratified yet for the Caribbean part of the Netherlands.

The Ombudsman for Children is concerned about the number of children living in poverty on the islands. In a joint report<sup>14</sup> with the National Ombudsman, we conclude that young people who grow up poor in the Caribbean Netherlands often end up in a vicious cycle of problems. We believe that in the short term, it is necessary to work on providing more shelter facilities and affordable accommodation for vulnerable young people, as well as more opportunities for training and internships. Young people should also have access to a counsellor or buddy programme. We are currently working on a study among single parents living in poverty in the Caribbean Netherlands. The study focuses on the problems that parents face when raising children.

Some improvements are apparent in the field of youth care and education. For example, new partnership agreements have been made between Care and Youth in the Caribbean Netherlands (ZJCN) and the national government, and a study has been initiated into care for young people on the islands, with the aim of reducing the number of children who need to be moved to the European Netherlands so that they can receive care. A pilot scheme providing sheltered housing has also been launched on the island of Bonaire. The Ministry of Education, Culture and Science has conducted research into education in the Caribbean part of the Netherlands and has developed a new policy based on its findings. The fact that specialist educational facilities will be introduced and that there will be a duty of care are positive developments. These new plans must be introduced in the near future.

#### *Recommendations*

- *Ensure that specialist forms of youth support are available nationwide. Make sure that children receive appropriate care and support, regardless of which municipality they live in.*
- *Invest in cooperation between the relevant parties to ensure that there is adequate support for the victims of child abuse in all municipalities.*
- *Provide national standards for the support of children in education that guarantee equal access for all children.*
- *Municipalities and national government should agree on a minimum set of services for children living in poverty that is to be offered in every municipality, and they should also agree on eligibility for those services.*

<sup>13</sup> For all relevant parliamentary documents, see this [overview](#).

<sup>14</sup> National ombudsman & The ombudsman for Children (2020). [A Poor Beginning. A study examining poverty-related problems among young adults in the Caribbean Netherlands](#). The Hague: National ombudsman.



*Recommendations specific to the Caribbean Netherlands:*

- *Take responsibility for a wider approach to child abuse and domestic violence in the Caribbean part of the Netherlands. Enable anonymous reporting of child abuse and domestic violence. Create a safe setting where concerns can be raised.*
- *Ratify the Istanbul Convention for the Caribbean part of the Netherlands.*
- *Break the vicious circle of poverty in the Caribbean Netherlands and work urgently on providing better support for young people who are living in poverty in the Caribbean Netherlands.*
- *Implement the new education policy in the Caribbean Netherlands to enable children to actually access the support they need in education, and to ensure that it is good quality and accessible.*

### **3. Legal inequality for groups of vulnerable children**

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

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

*Entitlement to financial support*

There are still problems with entitlement to financial allowances and benefits for certain groups of vulnerable children. In 2019, we reported that this is the case for, among others, children who are living legally in the Netherlands but are living with a parent without a residence permit. The detention of one of their parents or marriage to a partner from outside of the EU can also result in a family losing the right to financial support for the children. These problems have been resolved in part for children with a parent in detention<sup>15</sup>, but not yet for the other groups mentioned. Because of these policy choices, children are growing up in poverty, with dire consequences for their development. This situation is linked to the Netherlands' decision to attach conditions to Article 26 of the Children's Rights Convention. The government is still deliberating on the recommendation made by the Ombudsman for Children in 2017<sup>16</sup> to amend the Benefits Entitlement (Residence) Act.

In recent years, we have regularly received calls about problems with pocket money and clothing money for children who live in institutions and whose parents cannot cover those costs, possibly because they have had no contact with their children for some time or because they are unable to meet their financial responsibilities, for instance. These problems mean that children cannot purchase essential items such as winter clothing, sports clothing and school supplies. Some positive steps have been taken since our first report from 2017. For example, the Association of Netherlands Municipalities (VNG),

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<sup>15</sup> Parents with a spouse in detention are now entitled to childcare allowance, but not the single parent allowance designed for single parents living on a low income. Without this allowance, the parents' income may be below the social minimum.

<sup>16</sup> The Ombudsman for Children (2017). [Nederlandse kinderen ontkoppeld. Als de verblijfsstatus van je ouders je levensstandaard bepaald](#). ['No benefits for Dutch children. When the immigration status of your parents determines your standard of living']. The Hague: The Ombudsman for Children.

together with sectoral associations, has drawn up a guide<sup>17</sup> providing information for municipalities and institutions. At the same time, the survey shows that there continue to be children whose pocket and clothing money are not reimbursed. The majority of problems arise due to the difficulty of reaching agreements between the parties involved or inadequate reimbursements.

#### *Tackling inequality of opportunities in education*

For some time already, there have been concerns about inequality of opportunities in the Netherlands. Our education system seems inadequately equipped to provide equal opportunities for children whose parents have a lower level of education and parents of lower socio-economic status.<sup>18</sup> In 2020, the COVID-19 pandemic had a major impact on children's well-being and education. Lockdowns and remote teaching and learning have resulted in a further exacerbation of inequality of opportunities among children. Children from a low or medium socio-economic background are one and half times more likely to fall behind in their language/maths skills than children from a higher socio-economic background.<sup>19</sup> The government has made €8.5 billion available for the National Recovery and Perspective Programme for pupils in primary and secondary education, as well as for secondary vocational education and higher education.<sup>20</sup> For the time being, however, this programme has few specific goals, not even when it comes to combating rising inequality of opportunities.

#### *Children in refugee camps in Syria*

It is estimated that around 70 children<sup>21</sup> with Dutch parents who travelled to the caliphate and are now living with their mothers in camps in north-eastern Syria, often in terrible conditions. The Netherlands is still very reluctant to repatriate the children with links to the Netherlands who are living in refugee camps in Syria. So far, only two children have been actively repatriated, both of them orphans. The National Coordinator for Counterterrorism and Security (NCTV) indicates that conditions in the relief camps where the women and children in question are living are still appalling.<sup>22</sup> There is a shortage of food and drinking water, poor hygiene and a lack of medical care. In addition, the first coronavirus cases have been confirmed at the Al-Hawl camp. The Netherlands views these children first and foremost as victims, but does not wish to repatriate them actively. The reasons<sup>23</sup> given for this are that repatriating the children cannot be viewed separately from the issue of repatriating their parents, given that separating the children from their parents is an undesirable outcome and would also entail legal complications. In addition,

<sup>17</sup> Association of Netherlands Municipalities (VNG), Youth Care The Netherlands, Dutch Association of Healthcare Providers for People with Disabilities (VGN) & Dutch Association of Mental Health and Addiction Care (GGZ Nederland) (2017). [Handreiking zak- en kledinggeld voor kinderen met een maatregel voor jeugdbescherming](#) ['Guidance on pocket and clothing money for children in the child protection system'].

<sup>18</sup> Since, 2016, the Education Inspectorate has reported annually about inequality of opportunities in the education system in its *The State of Education* reports.

<sup>19</sup> Education Inspectorate (2021). [De staat van het onderwijs 2021](#). ['The State of Education']. Utrecht: Education Inspectorate.

<sup>20</sup> Ministry of Education, Culture & Science (OCW) (2021). [Nationaal Programma Onderwijs. Steunprogramma voor herstel en perspectief](#). ['National Education Programme. Support Programme for Recovery and Better Prospects']. The Hague: OCW.

<sup>21</sup> AIVD (2021). [Uitreizigers en terugkeerders. Hoeveel Nederlanders zijn uitgereisd en bevinden zich nog daar of in de regio?](#) ['Jihadist foreign fighters and return: How many people from the Netherlands traveled to Syria and are still in the region?'] Visited on 14 April 2021.

<sup>22</sup> NCTV (2020). [Dreigingsbeeld Terrorisme Nederland 53](#). ['Terrorist Threat Assessment 53']. The Hague: NCTV.

<sup>23</sup> [Government letter](#) (2018, 16 June). *Parliamentary Papers II 2017/18*, 29754, No. 461.

the Dutch government is not actively working to bring adults living in the camps in Syria back to the Netherlands along with any children they may have, and the current policy is also that no consular assistance is provided in Syria. Furthermore, the Dutch government seeks to make a broader assessment of the interests at stake, including the safety and security of those involved, the potential impact on international relations, and the potential impact on national security in the Netherlands and the other Schengen countries.

Other European countries are repatriating children from the camps in Syria, including Germany, Finland and Belgium. Your Committee has now taken the position<sup>24</sup> that these children fall under the jurisdiction of the states that their parents left, and that those states therefore have a responsibility towards these children.

#### *Stateless children*

In December 2020, proposals regarding the procedure for determining statelessness were submitted to parliament. One proposal includes an amendment to the Dutch Nationality Act that would enable children with no legal residence to opt for Dutch citizenship if they have been stateless in the Netherlands since they were born. This would be possible after ten years, instead of three years for stateless children with legal residence. Contrary to Article 2 of the UNCRC, this would introduce a distinction between children on the basis of their residence status.

#### *Recommendations*

- *Apply the principle of legal equality to legal and regulatory implementation of social services.*
- *Withdraw the exception to Article 26 of the UNCRC.*
- *Make sure that families with a partner in detention, a partner abroad or a partner without right of residence can claim financial assistance so that these children do not grow up in dire poverty.*
- *Ensure that the legal right to pocket money and clothing allowance for children and young people living in a care institution is arranged properly, by establishing this in law for example, so that children who are entitled to it actually receive it. Identify who is responsible for this.*
- *In the National Programme for Recovery and Perspective, set clear goals for improving the life chances of the children in education who have been affected the most by the measures to tackle the spread of COVID-19.*
- *Actively repatriate children with links to the Netherlands who are living in refugee camps in Syria. Make sure those children receive the protection and care they need in order to recover.*
- *Do everything possible to protect children with links to the Netherlands who are living in refugee camps in Syria, and to maximise their life chances.*
- *Give all stateless children born in the Netherlands access to Dutch citizenship, without making a distinction based on residence status.*

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<sup>24</sup> UN Committee on the Rights of the Child. Communications No. 79/2019 and 109/2019 L.H. et al v. France and 77/2019 F.B. et al v. France.

#### 4. Inadequate legislative integration of children's interests and voices

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

The interests of children (Article 3, UNCRC) and the right to be heard (Article 12, UNCRC) have still not been adequately integrated into legislation, policy and implementation. There are no criteria for assessing how the interests of children should be assessed and taken into account in line with Article 3, UNCRC and General Comment 14. Despite a positive response from the government to our efforts to draw attention to the obligations in Article 3, we have seen no action to address these or to incorporate Article 3, UNCRC into policy, legislation and regulations or to implement it on a structural basis.<sup>25</sup> In many sectors, there is no formal regulation of children's right to be heard either, and certainly not for children under the age of 12.

##### *The interest of the child*

The fact that the interests of children have no independent status can sometimes lead to distressing situations in the field of immigration law. Immigration law specifies no criteria for examining the best interests of the child and taking these into account in decisions, as prescribed by Article 3, UNCRC and General Comment 14. As a result, none of the aspects of children's lives that are important to their development are taken into account in decisions relating to residence and international protection. A private member's bill<sup>26</sup> was put to the House of Representatives some time ago proposing that the interests of children be enshrined in immigration law. This has yet to be debated.

Nor are the interests of the child adequately enshrined in far-reaching decisions regarding education and youth support. Improvements to decision-making on exemptions from education and school admissions and exclusions may have an important role to play in solving the problem of children who are not in education. However, this is not a part of the current approach to children not in education. In 2020, consultations were launched regarding legislative proposals to improve decision-making around exemptions on physical or psychological grounds. The guidelines set out in Article 3, UNCRC have not been adequately integrated into these proposals. Investigations<sup>27</sup> by the Ombudsman for Children show that other decisions about education still do not take adequate account of the specific situation of the child, nor of their vulnerability, needs and abilities. The interests of the child are therefore not explored and taken into account adequately. The Ombudsman for Children was forced to draw the same conclusion in an investigation into the decision to close an institution for young people with complex problems.<sup>28</sup> In youth support, implementing organisations are currently conducting pilot schemes, together with the Ombudsman for Children, that involve giving the interests of the child a clearer place in decision-making. When it comes to decisions about provisions for children and

<sup>25</sup> See The Ombudsman for Children (2019). [In vier stappen naar het beste besluit voor het kind. Het Kinderrechtenverdrag als kompas bij besluitvorming](#) ['The best decision for the child in four steps. The Children's Rights Treaty as a compass for decision-making'].

<sup>26</sup> See [Parliamentary Papers II](#) 2016-19 – 34541 for all relevant parliamentary documents.

<sup>27</sup> The Ombudsman for Children (2020), [Van passend naar inclusief. Kinderen over hun perspectief op inclusief onderwijs](#) ['From special to inclusive. Children's perspective on inclusive education']. The Hague: The Ombudsman for Children. The Ombudsman for Children (2020). [Het beste besluit voor een thuiszitter](#) ['The best decision for a child not in education']. The Hague: The Ombudsman for Children.

<sup>28</sup> The Ombudsman for Children (2020). [Belangen van de kinderen voorop?](#) ['The children's interests first?'] The Hague: The Ombudsman for Children.

families that live in poverty, there is frequently scant regard for the interests of the child and little effort is made to find out where those interests lie, meaning that there is little customisation when it comes to children and families.<sup>29</sup>

The Ombudsman for Children has noted in various investigations of complaints from young people that there are not currently enough options in criminal law for prioritising the interests of children. In an investigation<sup>30</sup> into a complaint by a young person who was placed in solitary confinement, it was notable that police said that they regularly place underage detainees in solitary confinement. The police do this partly because frequently no other solutions are available. The Ombudsman for Children has therefore recommended looking into more child-friendly alternatives for young people who are displaying dangerous behaviour after their arrest. Other young people have had to sleep in regular police cells for a night, partly due to regulations regarding their entitlement to a lawyer.<sup>31</sup> The confinement of a minor in a cell has an enormously negative impact, and is or may be a violation of Article 3, paragraphs 1, 6, 37 and 40, UNCRC.

Juvenile criminal law was introduced in the Caribbean part of the Netherlands on 1 August 2020. The Ombudsman for Children has concerns about whether the placement of minors in a penitentiary institution will be child-friendly and meet the requirements set in the Convention on the Rights of the Child for the imprisonment of children. There are also concerns over whether minors will be able to maintain contact with their parents (in person and otherwise). In particular, this applies to minors from Saba and Sint Eustatius, because the penitentiary institution is located on Bonaire.

#### *The right to be heard*

In recent years, although there has been more focus on the importance of listening to children when it comes to making decisions that will impact on their lives, this has not yet led to the adequate incorporation of Article 12 of the UNCRC into legislation and policy.

For example, the right for children to be heard is not currently part of Dutch legislation on education. Research<sup>32</sup> by the Ombudsman for Children shows that children who need support do not feel adequately seen or heard by their school or by the other parties involved in supporting them. As a result, that support is inadequate or remains inaccessible. A positive development is that the Dutch government has announced that it wishes to create a legal basis for the right to be heard in relation to decisions regarding educational support.<sup>33</sup>

<sup>29</sup> See: The ombudsman for Children (2017). [Alle kinderen kansrijk](#). ['Opportunities for all Children'] The Hague: The Ombudsman for Children.

<sup>30</sup> The Ombudsman for Children (2020). [Afkoelen in de isoleercel](#) ['Cooling off in the isolation cell']. The Hague: The Ombudsman for Children.

<sup>31</sup> Under current regulations, the right to a free on-call lawyer expires if a child is sent home at this stage of a police investigation. The government has indicated that it wishes to change this. The Ombudsman for Children (2015). [Een nacht in de cel](#) ['A night in jail']. The Hague: The Ombudsman for Children. The Ombudsman for Children (2019). [Stop! Onderzoek naar het optreden van de politie, Eenheid Noord-Holland](#) ['Stop! Investigation into the actions of the police, Noord-Holland Unit]. The Hague: The Ombudsman for Children.

<sup>32</sup> The Ombudsman for Children (2020). [Van passend naar inclusief. Kinderen over hun perspectief op inclusief onderwijs](#) ['From appropriate education to inclusive education. Children's perspectives on inclusive education']. The Hague: The Ombudsman for Children.

<sup>33</sup> [Government letter](#) (2020, 4 November). *Parliamentary Papers II 2020/21*, 31497, nr. 371.

The law includes no requirement to involve children under 12 years of age in decisions regarding their own care or youth support. But older children are dissatisfied with the degree to which they are involved, too. For children under guardianship and/or living in foster families<sup>34</sup> and children who require hospital care<sup>35</sup>, the main complaint is that they are not sufficiently involved in decision-making processes. The Ombudsman for Children will make recommendations about the latter group in May 2021.

The inadequate priority given to Article 12 of the UNCRC also manifests itself in the failure to ratify the third facultative protocol (also see Section 6. *Inadequate commitment to general implementation measures*).

#### *Recommendations*

- *Develop an integrated vision and approach to taking account of the interests of children in legislation, regulations and implementation across the whole youth sector and ensure implementation. Pay particular attention to the voice of children in this.*
- *Formulate guidelines for decision-making around education and youth support, in accordance with Articles 3 and 12, UNCRC and General Comment 14.*
- *Incorporate structural criteria for assessing the best interests of the child and balancing of interests into immigration law and the way in which it is implemented, in line with Article 3, UNCRC and General Comment 14.*
- *In the case of decisions on the awarding of provisions for children and families living in poverty, the interests of the children involved are still not adequately investigated or taken into account, which often means that there is a lack of customisation with respect to children and families.*
- *Draft a policy in the European and Caribbean Netherlands regarding child-friendly detention and juvenile detention which is straightforward to implement and which meets the conditions set by the UNCRC for the detention of minors. Evaluate which changes are needed to enable more child-friendly alternatives to current practices.*
- *In the Caribbean Netherlands, ensure that juvenile detainees can have regular in-person contact with their parents. Enable parents to visit their child and support them in this if necessary.*

#### **5. Issues in specialist care and support**

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

There are major problems with access to specialist care for vulnerable children. These issues have become worse since our previous report.

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<sup>34</sup> The Ombudsman for Children (2018). [Zorgenbrief voogdij](#) ['Concerns about children under guardianship orders']. The Hague: The Ombudsman for Children. The Ombudsman for Children (2019). [Pleegkinderen aan het woord](#) ['Foster children speak out']. The Hague: The Ombudsman for Children.

<sup>35</sup> The Ombudsman for Children (2021). *Mijn zorg, Mijn zaak!/?* [My care, my business!/?]. The Hague: The Ombudsman for Children (forthcoming).

### *Access to care*

In November 2019, the Health and Youth Care Inspectorate published a report<sup>36</sup> showing that the government is not taking adequate responsibility for protecting children whose development is being seriously threatened. The certified institutions for youth protection and juvenile rehabilitation are unable to perform their statutory duties adequately, according to the Inspectorate. The assistance for children and parents ordered by the juvenile court judge is not being used or not being used in a timely manner. In practice, youth protection staff and juvenile probation officers are responsible for protecting and helping children whose development is seriously threatened, but they are not always able to do this. The certified institutions are no longer able to perform their complex duties due to staff shortages, insufficient availability of support and financial uncertainty.

The problems in youth services have worsened since then. The impact of the measures to contain COVID-19 have played a role in this. A publication<sup>37</sup> issued by the Health and Youth Care Inspectorate in 2021 shows that the acute demand for support for serious problems has increased since the summer of 2020. There has been an increase in the number and severity of complex and chronic problems. The Inspectorate notes that there is a shortage of specialist treatment programmes for young people with serious problems. The number of young people waiting for help has also increased significantly. Mental health services cannot take care of all these young people and support services are being overwhelmed. According to the Inspectorate, waiting times for specialist care can be up to a year in certain regions. At other institutions, the waiting time for follow-up care can be over a year in some cases, according to the Inspectorate.

### *Closed institutions*

There has been no change in the bottlenecks for children in closed institutions that we reported in 2019. Although institutions are working to reduce coercion, isolation and measures that curtail freedom, these are still being used regularly, and sometimes unconsciously.<sup>38</sup> The De Winter Committee, which investigated violence in youth care, has stated that its recommendations have yet to be adequately followed up.<sup>39</sup> The educational services on offer are not yet adequate for children in care. Children in closed institutions have been affected even more than most by the measures to contain COVID-19, including strict restrictions on visitors, the loss of daytime activities and absent staff members.<sup>40</sup>

### *Legislation*

A positive development is that the Netherlands is working on legislative proposals to improve the availability of care for young people. The bill has not yet been submitted to

<sup>36</sup>Health and Youth Care Inspectorate (IGJ) (2019). [Kwetsbare kinderen onvoldoende beschermd](#) ['Insufficient protection for vulnerable children'] Utrecht: IGJ.

<sup>37</sup> Health and Youth Care Inspectorate (IGJ) (2021). [Factsheet: onvoldoende tijdige en juiste hulp voor jongeren met ernstige psychische problemen](#). ['Factsheet: timely and effective support for young people with severe psychological problems is lacking'] Utrecht: IGJ.

<sup>38</sup> Inspectie Gezondheidszorg en Jeugd (2020). [Aandacht en ambities leiden tot terugdringen van vrijheidsbeperkende maatregelen](#) ['Attention and ambition lead to reduction in coercive measures']. Utrecht: IGJ.

<sup>39</sup> Van der Kaaden, A.-M. (2020, 11 juni). ['Overheid doet te weinig voor veiliger jeugdzorg'](#) ['Government does too little to make youth care system safer']. *NRC*.

<sup>40</sup> The Ombudsman for Children (2020). [Als je het ons vraagt. Thuis in 2020](#). ['If You Ask Us. At Home in 2020.']. The Hague: The Ombudsman for Children.

the House of Representatives. The Netherlands is also working on a bill to strengthen the legal position of young people in closed youth institutions. Work is also being done on a scenario to improve and simplify the youth protection system.

#### *Caribbean Netherlands*

In the Caribbean Netherlands, the problem is that if children from Saba or Sint Eustatius are placed in an institution on Bonaire or in the European Netherlands, there is no continuity of education and the children hardly see their parents (or other family members) anymore. Children are allowed to visit relatives once a year, with expenses covered by the Caribbean Netherlands Youth Care Service (ZJCN). In practice, if parents have limited financial resources, the amount of face-to-face contact will be severely limited. There is therefore a question regarding whether this situation complies with Article 3, paragraphs 3, 6, 9 and 37 sub a, UNCRC.

#### *School support for children with multiple support needs*

On the basis of both the research carried out by the Ombudsman for Children<sup>41</sup> and the final evaluation of inclusive education<sup>42</sup> published in 2020, it appears that mainstream schools are still unable to provide adequate support for children with multiple and/or complex support needs. We note that certain essential requirements have yet to be put in place: there is not enough time, staff or expertise to give children the attention and support they need. Didactic skills are also inadequate, there is no targeted school policy in the field of inclusive education and teacher training programmes do not focus adequately on this area; all these factors mean that regular education cannot yet cater to this group of children properly.<sup>43</sup>

Children with (complex) additional support needs are entitled to inclusive education in which they go to school with children without support needs. In 2020, the Ombudsman for Children called on the government to develop an ambitious plan to make education more inclusive. It is positive that the improvement strategy for inclusive education published in November 2020 states that the aim from now on is for more inclusive education.<sup>44</sup> We are concerned, however, about the lack of ambition with which this goal has been elaborated. By opting for a timeframe of 15 years and exploring the boundaries of inclusive education in advance, the government has demonstrated too little resolve and ambition.

#### *Recommendations*

- *Ensure that specialist youth mental health services are actually available and accessible in every region.*

<sup>41</sup> The Ombudsman for Children (2020). [Van passend naar inclusief. Kinderen over hun perspectief op inclusief onderwijs](#) ['From appropriate education to inclusive education. Children's perspectives on inclusive education']. The Hague: The Ombudsman for Children.

<sup>42</sup> Ledoux, G. & Waslander, S. m.m.v. Eimers, T (2020). [Evaluatie passend onderwijs. Eindrapport mei 2020](#). ['Evaluation of Appropriate Education. Final Report May 2020'] Amsterdam: Kohnstamm Instituut | Tilburg: TIAS School for Business and Society, Tilburg University | Nijmegen: KBA Nijmegen.

<sup>43</sup> The Ombudsman for Children (2020). [Van passend naar inclusief. Kinderen over hun perspectief op inclusief onderwijs](#) ['From appropriate education to inclusive education. Children's perspectives on inclusive education']. The Hague: The Ombudsman for Children. Ledoux, G. & Waslander, S. m.m.v. Eimers, T (2020). [Evaluatie passend onderwijs. Eindrapport mei 2020](#). ['Evaluation of Appropriate Education. Final Report May 2020'] Amsterdam: Kohnstamm Instituut | Tilburg: TIAS School for Business and Society, Tilburg University | Nijmegen: KBA Nijmegen.

<sup>44</sup> [Government letter](#) (2020, 4 November). *Parliamentary Papers II 2020/21*, 31497, No. 371.



- *Implement the recommendations of the De Winter Committee on combating violence in residential youth and foster care.*
- *Invest in a suitable and comprehensive range of education in closed institutions.*
- *Make it possible for children from Saba or Sint Eustatius who are placed in a care institution on Bonaire or in the European Netherlands to receive regular visits from their parents and to visit their parents and other family members themselves on their island of origin. The same should of course apply to children from Bonaire who are placed in care in the European Netherlands.*
- *Guarantee continuity of education for children who are placed in an institution on Bonaire or in the European Netherlands.*
- *Ensure adequate support in education for children with complex or multiple support needs and improve the accessibility of education for this group.*

## **6. Inadequate efforts on general implementation measures**

### *General implementation measures*

The Ombudsman for Children is of the opinion that more effort is needed on general implementation measures to ensure that the Netherlands complies with the requirements of the UNCRC. First of all, we consider it necessary for the Netherlands to ratify the Third Optional Protocol on a Complaints Procedure, so that children can lodge complaints with the UN. In addition, we note that more effort is needed to test legislation and regulations against the Convention, to provide information about children's rights and to collect data about children and their well-being.

#### *Review of laws and regulations*

In order to investigate what impact policy, legislation or regulations will have (or have had) on the realisation of children's rights, a clear mechanism is required to check in advance and clarify whether new regulations or policy are in line with children's rights. The government's answers reveal the human rights test that is applied is too limited, which does not take account of rights from the UNCRC. The SDG test also fails to take sufficient account of children's rights and may, if testing against SDGs becomes more widespread, lead to the hollowing out of children's rights. In 2020, the European Network of Ombudsmen for Children (ENOC) published a position<sup>45</sup> and guidelines<sup>46</sup> on the use of a Child Rights Impact Assessment (CRIA). The Ombudsman for Children will continue to point out to the government the added value of the children's rights test when it comes to implementing the Convention.

#### *Data collection*

The data that is collected in the Netherlands, and which is required in order to make policy effectively, is not yet complete and there is room for improvement. The CBS (or Statistics Netherlands, the national office for statistics) collects data on children and young people in the Netherlands, and makes this available in the form of an online database: StatLine. They also publish the Youth Monitor every year. Both contain a wealth of information about children and young people, and data can be found on various themes that relate to

<sup>45</sup> ENOC (2020). [ENOC Statement on Child Rights Impact Assessment](#). Strasbourg: ENOC.

<sup>46</sup> ENOC (2020). [ENOC Common Framework of Reference on Child Rights Impact Assessment](#). Strasbourg: ENOC.

young people, such as young people and family, health and welfare, and safety and justice.<sup>47</sup> However, often the data cannot be broken down by age. The data thus paints with a very broad brush. Indicators or age groups cannot always be linked or grouped together, which makes it more difficult to conduct longitudinal research into trends and developments. However, we also note that Statistics Netherlands is also taking steps to remedy this.<sup>48</sup>

Information on the health and well-being of young children aged between 0 and around 8 is very limited, and in effect is missing altogether. Information about children in youth mental health services or, more broadly, about the mental well-being of children and young people is also virtually non-existent.<sup>49</sup> This is partly because different sets of instruments are used in different regions, which makes it difficult to establish a national picture. We note that various parties, in addition to Statistics Netherlands, are making efforts to obtain such information and make this accessible. Indeed, this is already being done with respect to youth support, youth protection and juvenile rehabilitation. It is unclear to what extent the Dutch government is encouraging this approach to be extended to youth mental health services or trying to make this type of monitoring structural.

Too little data is available, specifically about children and young people in the Caribbean Netherlands. This is concerning. Various initiatives have been set up, however, to collect more data on children and young people on the islands, including research by Statistics Netherlands. Here, too, it is important that these initiatives are made structural, so that information about the upbringing and well-being of children in the Caribbean Netherlands is at least at the same level as data collected in the European Netherlands.

#### *Information about children's rights*

Although human rights are part of civic education, only 30 percent of children indicate that the education they receive (or have received) at school includes children's rights.<sup>50</sup> Over half of children expressed the need for information about this and professionals, including prospective professionals, also require better information. In our contact with professionals, we observe that people are aware of the existence of the UNCRC, but are often unable to properly evaluate what the Convention means for their own work.

#### *Recommendations*

- *Ratify the third Optional Protocol to the UN Convention on the Rights of the Child regarding a Complaints Procedure.*
- *Implement a standard children's rights test (CRIA) on legislation and regulations that (could) have a positive or negative impact on children's rights.*
- *Ensure that data collected can be analysed better by using standard indicators and breaking down data by age instead of age group.*
- *Ensure that data is collected on the well-being and health of the youngest children, from 0 to approximately 8 years, in the (European and Caribbean) Netherlands.*

<sup>47</sup> Available data can be accessed online at the [Youth Monitor](#) website of the CBS.

<sup>48</sup> See for example the latest Youth Monitor of the CBS: CBS (2020) [Landelijke Jeugdmonitor 2020](#) ['National Youth Monitor']. The Hague: Ministry of Health, Welfare and Sport (VWS).

<sup>49</sup> Dutch Knowledge Centre for Child and Adolescent Psychiatry (2019). [Psychische gezondheid van de jeugd in beeld](#) ['A view of the psychological health of our youth']. Utrecht: Dutch Knowledge Centre for Child and Adolescent Psychiatry.

<sup>50</sup> TwinQ (2021) Basic research on children's rights (available from UNICEF Netherlands).

- *Ensure that data is collected on the mental health of children and young people in the (European and Caribbean) Netherlands.*
- *Invest in education on children's rights for children and professionals.*