

The Netherlands Institute for Human Rights Submission

**to the 69th session of the Committee on the Rights of the
Child concerning the 4th Periodic Report of the Kingdom of
the Netherlands**

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Introduction

The Committee on the Rights of the Child has scheduled the consideration of the fourth periodic report of the Netherlands for its 69th session on 27 May 2015. The Netherlands Institute for Human Rights (hereafter: the Institute) used the opportunity to bring a number of issues to the attention of the Committee during the pre-sessional working group on 24 September 2014 with its written submission of August 2014. The Institute appreciates the invitation to provide supplementary information about the list of issues as well as information on recent developments. The Institute's submission of August 2014 is still relevant to the situation of the rights of the child in the Netherlands. The present submission of April 2015 focusses on the list of issues, recent developments and changes with respect to the previous contribution. It is based on the Institute's activities relating to the human rights of children in the Netherlands, and therefore does not cover all questions in the list of issues.

Part I: Questions of the committee

Question 3: *In view of information received according to which security, health care and education have been identified as priority areas in the Netherlands in the Caribbean (Bonaire, St Eustatius and Saba), please indicate how the coordination of policy and strategy development is ensured with regard to programmes, services and laws, as well as measures, with a view to addressing the priority areas identified by each constituent part of the Kingdom of the Netherlands.*

Juvenile justice system in the Caribbean part of the Netherlands

The Convention on the Rights of the Child requires that juvenile offenders should be prosecuted and adjudicated in a manner appropriate to their age, preferably by means of a separate juvenile justice system laid down in laws and regulations. This does not exist in the Caribbean part of the Netherlands.

At present Bonaire, St Eustatius and Saba still have their own Criminal Code which differs considerably from the law in place in the European part of the Netherlands and from that in Curaçao, Aruba and St Maarten. Various gaps in the juvenile justice system exist. As a consequence the situation is not in full conformity with the Convention on the Rights of the Child. There is no separate juvenile justice institution (though there is a young adults ward within the Correctional Institution Dutch Caribbean in Bonaire). Furthermore, preventive custody by only detaining young adults during the night is not arranged for like in the European part of the Netherlands. This measure allows young adults to continue their education or work during the day. The provision in the law that allows that 16-17 year old youngsters can be convicted to life sentence when they are tried under criminal law for adults contravenes article 37 of the Convention on the Rights of the Child.

As the Government describes there have been significant improvements in the juvenile justice approach, especially to prevent further use of criminal law for minors. This approach is rather successful but frequent changes of personnel threaten its continuity. This shows that the work of the different actors in the judicial chain needs continuous attention.

The Government has promised Parliament to present a vision and action plan for the juvenile justice policy in the Caribbean part of the Netherlands.

The Committee could ask the Government what gaps it sees in the present juvenile system which may or actually do contravene the Convention on the Rights of the Child and how and when these gaps will be amended.

Adequate standard of living

Many families in the Caribbean part of the Netherlands still live in harrowing poverty, despite initiatives of the local and national Government. A Task Force on Children's Rights and Domestic Violence has been set up by the national and local Governments.

The State Secretary for Social Affairs indicates that a structural approach of the social-economic policy encounters difficulties due to the lack of figures. Therefore she has assigned Statistics Netherlands to do research into the gross domestic product and to income and employment indicators. Outcomes are expected in Spring 2015 and will serve as an important basis for future policies.

The Institute suggests that the Committee asks the Government which concrete measures it takes in order to reduce poverty in the Caribbean part of the Netherlands as soon as possible. In addition, the Government could be asked about the outcomes of the research of Statistics Netherlands and the implications of the research for the social system and socio-economic policy.

Question 4: *Please indicate what efforts have been made to ensure a smooth transition to the decentralisation in 2015 to municipalities, both administratively and financially, of all support and care services for children. In this regard, please indicate how the State party intends to monitor the effects of the decentralisation on the rights of the child and guarantee that municipalities have the required expertise and resources to protect the rights of all children within their jurisdictions.*

As of 1 January 2015 the Government has decentralised the responsibility for youth care services to municipalities. At the same time the budget for youth care services has been cut. In 2014 several stakeholders expressed their concern that this would lead to a reduction of facilities because some municipalities wanted to limit the number of referrals to psychiatric treatment. Doctors were worried that they would not be able to refer children to specialists. This could result in prescribing more medicine to children with psychiatric problems instead of giving them appropriate psychiatric treatment. It is not clear yet to what extent these concerns have materialised.

Furthermore, the Dutch Data Protection Agency expressed its concern about a lacuna in the new Youth Act concerning interference with the private life of children using youth welfare services. Youth workers have to submit information about their clients to municipalities for the financial settlement and control of claims despite their duty of confidentiality. The law does not provide adequate safeguards for the processing of these personal data by municipalities.

The Committee could ask the Government to investigate the impact of decentralization of youth care services on vulnerable children. The Committee could also ask the Government how it intends to safeguard the privacy of children using youth welfare services in the processing of personal data.

Question 6: *Please indicate whether steps have been taken to ensure that business enterprises that carry out operations abroad through subsidiaries can be held accountable for violations of children's rights and to ensure that children have access to effective remedies.*

The Government has commissioned an investigation into the risks for people and environment when Dutch organizations import products from or have products made in other countries. During this investigation the human rights of children have also been

taken into account. The investigation has resulted in identifying 13 sectors in the Netherlands where there are considerable risks for people and environment. These sectors are the building sector, the chemical industry, the retail trade, electronics, energy, the financial sector, the wholesale trade, wood and paper, agriculture and the horticulture, metal, oil and gas, food products, textile and clothes. In the coming three years the Government intends to come to an agreement with all these sectors about how the identified risks can be reduced on a structural basis.

A member of Parliament has written a statement on what can be done against child labour. One of the proposals is to forbid the products of child labour in the Netherlands. The Government has responded to the statement by saying that to tackle child labour it thinks it would be better to take trade measures at the European level. Furthermore the Government announces that it will commission independent research which will focus on the question if due diligence of Dutch companies (also concerning child labour) has been put down sufficiently in Dutch law or if new regulations are necessary.

The Institute suggests that the Committee asks the Dutch Government about the status of this research and when this research is supposed to be finalized.

Given the fact that child labour is a serious and worldwide problem, the Institute is of the opinion that the prohibition of selling products that have been produced by child labour needs to be regulated at the European level. The Dutch Government has announced it will discuss the possibilities to combat child labour at a EU level with the European commissioner of trade. It has also announced it will give extra attention to corporate social responsibility and business and human rights when the Netherlands is chair of the EU during the first half of 2016.

The Committee could ask the Dutch government to be more specific about what it intends to do against child labour at the European level.

Addressing child labour at the European level does not mean that it dismisses the Netherlands of the responsibility to take measures at a national level. The research into risks in different sectors in the Netherlands and the intention to make agreements with sectors with high risks is a good example of how the Dutch government is trying to fulfil this responsibility. The Institute is of the opinion that this can contribute in decreasing child labour. However, if the agreements do not have this effect, the question is what Government will do next.

The Committee could ask the Government what it intends to do if it does not succeed in making agreements with high risk sectors or if the agreements end up not contributing to decreasing child labour.

Question 7: *Please indicate the measures that have been taken to ensure that cases of discrimination against children in vulnerable and marginalized situations are addressed effectively in all parts of the Kingdom. In this regard, please provide updated information, including the number of cases involving children, on the impact of the Municipal Anti-Discrimination Services Act of 2009 which obliges all municipalities to ensure that all citizens are able to turn to a local Anti-Discrimination Service for support if they are discriminated against.*

Children with disabilities encounter discrimination in entering regular schools (i.e. schools not specifically for children with disabilities) and when they want to participate in cultural, recreational and sports activities.

Discrimination of children with disabilities by schools

The Institute regularly receives complaints and gives opinions about children who are not accepted at schools or sent away because of their disability or chronic illness. Or about children with a disability who do not receive reasonable accommodation, such as adapted exams or study materials. According to Dutch law it is discriminatory to refuse to provide reasonable accommodation, unless this would impose a disproportional burden on the school. Another underlying problem that could lead to discrimination is that teachers do not always know how to treat a person with a disability and are often unaware of available kinds of reasonable accommodation.

The Institute suggests that the Committee asks if in the curriculum of teachers for primary and secondary school (more) attention can be paid to (how to deal with) children with disabilities. The Committee could also ask what the Government does to make schools aware of the equal treatment law which prohibits discrimination on the basis of handicap or chronic illness.

Children with disabilities are often not accepted as pupils by regular schools or are sent away from school because of their disabilities. Because of this many children with disabilities are at home instead of at school. This is in violation of the Dutch Equal Treatment Act, which requires schools to examine whether access is possible, if necessary with some special measures taken by the school.

The Government has introduced a new system, called *passend onderwijs*, which means fitting education. In the new system, that has been put in place as of 1 August 2014, a school has the obligation to investigate if it is possible to accept a child (if necessary with a reasonable accommodation). If not, it has to make sure a child is accepted at another school. The results of the new procedure are not yet clear.

The Institute invites the Committee to ask the Government to give insight in the number of children that are not in school at this moment and how this number corresponds to earlier data.

Participation of children with disabilities in culture, recreation and sports

Children with disabilities often are not able to enter establishments such as theatres, restaurants or sport facilities because they are not accessible or because they are not accepted because of their impairments. It also happens that they have to pay an extra sum for bringing along something that is necessary for their mobility, such as a wheelchair or a guide-dog. For example when their parents book a vacation. A law proposal is being discussed in Parliament that forbids discrimination on basis of having a handicap or chronic illness when offering goods or services. Parliament will also soon decide about ratification of the convention on the rights of persons with disabilities.

The Institute advises the Committee to ask what the Government is intending to do to make cultural, recreational and sports facilities more accessible for children with disabilities.

Question 9: *Please inform the Committee on the measures taken to prevent and combat violence against children, including domestic violence, throughout the Kingdom and notably in the Netherlands in the Caribbean. Please provide detailed information on the results of the assessment of the entire healthcare system as envisaged in the State party's report (paragraph 36) with a view to determining whether institutions have a domestic violence and child abuse protocol in place and if their staff is trained to consistently use it.*

Because the Netherlands signed the Istanbul Convention it commissioned Regioplan Policy Research to conduct research into the nature and scope of domestic violence in the Caribbean part of the Netherlands. This research, as well as working visits of the Institute, show the severity and widespread domestic violence and violence against women and girls. Occurrences of domestic violence are however hardly registered. Domestic violence is closely linked to poverty on the islands. There are no or little facilities to assist victims, a policy is lacking and the approach is fragmented. The Government decided nevertheless to postpone the implementation of the Istanbul Convention for the Caribbean part of the Netherlands, it will investigate in 2016 which law is necessary to implement the Istanbul Convention. The Government promised that a policy will be made and it established a Task Force on Children's Rights and Domestic Violence to combat domestic violence. The local authorities started to implement a plan to combat domestic violence. On Saba and St Eustatius social workers have been appointed and on Bonaire a safe house will be established. Despite these positive measures, greater vigour is required to combat this pressing issue. Since violence against children is a severe breach of their fundamental rights, taking measures should be given more priority.

The Institute recommends that the Committee asks the Government which concrete measures it will take and within which time frame to combat domestic violence in the Caribbean part of the Netherlands.

Question 11: *Please indicate the results of the Government-wide Comprehensive Action Plan on the issue of "loverboys" with particular attention to its impact on potential victims including girls with mild learning difficulties who might be at a particular risk.*

In its reply to the Committee's list of issues, the Government reports on the actions aimed at preventing and combating trafficking, including domestic trafficking by so-called 'loverboys'. Most actions are awareness raising activities aimed at professionals as well as at potential victims. In December 2014, a report was published by the Azough Commission, entitled 'Their past is not their future. Action plan on girls victims of loverboys / domestic trafficking in youth care'. This report contains a large number of concrete recommendations for all stakeholders. The Government submitted the report to Parliament, discussion is scheduled for 29 April. The Institute expresses the hope that the government takes all steps necessary to fully implement the action plan.

In its replies to the Committee's list of issues, the Government refers to this report. It focuses on helping victims of domestic trafficking, and on measures aimed at early identification of victims. The Institute observes that the Azough Commission's report addresses many more types of measures. It points to the need for an approach that is both gender sensitive as well as designed for the specific problem of domestic trafficking. In addition to appropriate medical and psycho-social treatment, this includes due attention for education and other aspects of the future life of the girls concerned, such as their social life. It also stresses that treatment should further be aimed at enhancing self-respect and autonomy. The Institute welcomes these recommendations which are crucial to the empowerment of girls. A gender sensitive approach that pays specific attention to girls' empowerment would also meet the obligations included in the Istanbul Convention, which the Netherlands is about to ratify.

The Institute suggests that the Committee seeks a further update on the question of victims of domestic trafficking in light of the discussion scheduled in Parliament. In addition to awareness raising activities, which concrete measures have been taken to prevent and combat domestic trafficking? How has the Government addressed the gender sensitive nature of this issue?

Part II: Recently introduced policies

Citizenship education and human rights

The State Secretary for Education has tasked the national educational expertise centre SLO to develop a website with information on citizenship, research outcomes and a guide for schools on how to develop their school vision and policy on citizenship. This website will be launched shortly.

In November 2014 the State Secretary launched a campaign to review the school curriculum for pupils from 4-18 years. In his letter to Parliament he suggests that in the new curriculum personal and social formation of pupils should be addressed. This should include learning about the functioning of the rule of law and the underlying fundamental values. A special 'Platform Education 2032' has been tasked to steer a broad dialogue and come up with an advice to Government by Autumn 2015. Thereafter the legislative process will start, with expected new legislation in force in 2017.

This process creates opportunities to lay down human and children's rights more firmly in the new curriculum. Human and children's rights education might obtain a structural place in the Dutch school system.

The Institute suggests the Committee asks the Government in what way human and children's rights are included in initiatives to strengthen citizenship education. The Committee could also ask the Government how the process towards the new curriculum develops and whether the Government supports laying down human and children's rights more securely in the new curriculum.

Right to a nationality

In its report of August 2014, the Institute pointed out that stateless children who reside in the Netherlands illegally could not obtain Dutch nationality and therefore could not enjoy their right to a nationality under article 7 of the Convention on the Rights of the Child.

In November 2014, the Government announced a policy change in which stateless children who are born in the Netherlands but whose parents reside in the Netherlands illegally, have a right to opt for Dutch nationality. The Institute welcomes the Government's promise to give stateless children who reside in the Netherlands illegally the option to acquire Dutch nationality. It is however disappointing that these children have to meet much stricter criteria to obtain Dutch nationality than stateless children who reside in the Netherlands legally. For example, stateless children without a legal status can apply for Dutch nationality after 5 years whereas stateless children with a legal status can apply for Dutch nationality after 3 years. The Institute questions whether this is compatible with article 2 CRC, which states that no distinction must be made between children on the ground of, among other things, the living conditions of the child or the choices their parents make.

The Institute suggests that the Committee invites the Government to motivate why they make a distinction between stateless children on the basis of their legal status. The Committee could ask the Government why it is harder for stateless children who reside in the Netherlands illegally to enjoy their right to a nationality under article 7 of the Convention on the Rights of the Child than it is for stateless children who resides in the Netherlands legally.

Part III: Other issues

Children and the criminal justice system: Legal aid in ZSM approach

In its report of August 2014, the Institute pointed out some problematic aspects of the so-called 'ZSM approach'. Lack of legal aid in this procedure, as well as the risk of suspects

waiving their right to a review by an independent judge without realizing the consequences, are concerns of the Institute.

In January 2015 the Procurator General at the Supreme Court published a very critical report on the use of the *strafbeschikking*. This is a sanction - often a fine - the public prosecutor can impose on a suspect, without the involvement of an independent judge. It is important that the consequences of this sanction and the possibilities to fight it in court are clear to a suspect. Therefore, legal aid is very important. This is especially important when the suspect is a minor. In his report, the Procurator General points out that his investigation shows that minors do not always receive the legal aid they have a right to. The instruction of the Board of Procurators General which encompasses the safeguards for minor suspects and their right to legal aid, is unclear. In addition, the Procurator General concludes that no evidence of legal aid was present in the cases he investigated, even if there was no doubt about the application of the instruction and the safeguards it entails. In an official response, the government announced that the Public Prosecution Service will review the instruction to clarify its text, and that it would ask the Public Prosecution Service to supervise more closely that the instruction with regard to minor suspects is being followed.

The Institute recommends the Committee to ask the Dutch government about the ways in which it intends to ensure that children receive the legal aid before and during police questioning that they are entitled to and how it intends to monitor this.